SUPREME COURT OF THE UNITED STATES.

No. 390.

THE SHIP "BLACKWALL," HER TACKLE, CARGO, &c., JAMES CREARY, CLAIMANT, APPELLANT,

vs.

THE SAUCELITO WATER AND STEAM-TUG COMPANY AND GEORGE CLARK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF CALIFORNIA.

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Supreme Court of the United States. The ship "Blackwall," &c., Jas. Creary, claimant and appellant, vs. The Saucelito Water and Steam-tug Co., libellant and appellee. Transcript on appeal from U. S. Circuit Court, district of California.

1 *Appeal.*

THE SHIP BLACKWALL, HER TACKLE, CARGO, &C., James C. Creary, appellant,
vs.
THE SAUCELITO WATER AND STEAM-TUG COMPANY, *et als.*, respondents.

To the honorable the Supreme Court of the United States:

The appeal of the ship Blackwall, her tackle, cargo, &c., and James Creary, claimant and appellant, respectfully showeth, that on the day of , A. D. 1867, the above-named the Saucelito Water and Steam-tug Company and George Clark filed their libel in the District Court of the United States for the district of California, against the ship Blackwall, her tackle, apparel, cargo, &c., in a cause, civil and maritime, for the recovery of salvage. That the said ship and her cargo was arrested upon process issued upon said libel, and was discharged upon the said Crearey, as master and bailee thereof, filing his claim and entering into stipulations; and your petitioners thereupon filed his answer to said libel, and the said libel-
2 lants replied thereto, and such proceedings were had in the said cause that on the 22d day of October, 1867, a final decree was made and pronounced therein by the said District Court, wherein it was, in substance, adjudged that the said libellants recover against the said ship Blackwall, her tackle, cargo, and the sum of ten thousand dollars, together with costs.

And that after such final decree your petitioner duly appealed threfrom to the Circuit Court of the United States for the ninth circuit, district of California, and the said cause was removed thereby into the said Circuit Court and there tried anew upon the testimony taken in said District Court, and such proceedings were had in said Circuit Court that afterwards, on the second day of September, 1868, the said Circuit Court made a final decree in said cause, whereby it was decreed that the said decree of the District Court be in all things affirmed, with costs, and that the said appellees (respondents) have execution, and that the stipulators cause their stipulations to be fulfilled. Which said decree of the said Circuit Court is, as the appellant is advised, erroneous, and ought to be reversed.

Wherefore this appellant appeals from the whole of said decree of said Circuit Court to the Supreme Court of the United States,
3 and respectfully pray that [that] the said decree of the Circuit Court, and the libel, answer, pleadings, depositions, evidence and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court

will proceed to hear the said cause anew; and that the said decree of the Circuit Court, and every part hereof, may be reversed, and a decree made dismissing said libel, with costs, or such other decree as to the said Supreme Court shall seem just.

Dated San Francisco, September 2d, 1868.

JAMES C. CREARY, *Claimant.*

Endorsed: Ship Blackwall, her tackle, cargo, &c. J. B. Harman, proctor for appellants; W. H. Patterson, advocate. Filed 2d September, 1868. Geo. E. Whitney, clerk.

4 In the District Court of the United States in and for the district of California.

Libel.

THE SAUCELITO WATER AND STEAM-TUG COMPANY and George Clark *vs.* THE SHIP "BLACKWALL." } In admiralty.

To the Honorable Ogden Hoffman, judge of the District Court of the United States in and for the district of California:

The libel of the Saucelito Water and Steam-tug Company, owners of the steam-tug Goliath, and George Clark, master of the said tug, against the ship Blackwall, her tackle, apparel and furniture and cargo, and against all persons intervening for their interest therein, in a cause of salvage, civil and maritime, alleges as follows:

First. That the said Saucelito Water and Steam-tug Company are a corporation duly incorporated under the laws of California, and are now engaged in the business of towing; that their principal place of business is at the city of San Francisco; that the said company
5 are owners of the steam-tug Goliah, and that George Clark is her master.

Second. That on the 24th day of August A. D. 1867, the ship "Blackwall" was lying, loaded, between the city of San Francisco and Goat Island; that she was on fire, and was in great danger of being totally destroyed, and would have been destroyed but for the exertions of said steam-tug and her captain and crew; that the said George Clark went with said steam-tug Goliah to her assistance, and suceeded, after great trouble, and at great risk to the said tug, in quelling and subdueing the flames, and then towed the said ship to a place of safety; that in her endeavors to subdue the flames, the said tug was in great danger of being burnt, and was twice on fire; that for their endeavors in saving the ship and cargo the libellants are entitled to a reasonable share of said ship and cargo for the salvage thereof.

Third. That the said ship "Blackwall" is now lying at Vallego street wharf, in the harbor of San Francisco, and within the jurisdiction of this court.

Fourth. That all and singular the premises are true, and
6 within the admiralty and maratime jurisdiction of the United States and of this honorable court.

Wherefore libellants pray that process in due form of law, according to the course of this honorable court in cases of admiralty and maratime jurisdiction, may issue against the ship "Blackwall," her tackle, apparel and furniture and cargo, and that all persons claiming any interest therein may be cited to appear and answer, under oath, all and singular the matters aforesaid, and that this honorable court will be pleased to decree to the libellants a reasonable and proper salvage in proportion to the value of said vessel and cargo, and that the said ship, her tackle, apparel and furniture and cargo, may be condemned and sold to pay said salvage, with costs and charges and expenses, and that the libellants may have such other and further relief in the premises as in law and justice they may be entitled to receive.

GEO. CLARK.

Sworn to and subscribed before me this 26th day of Aug., A. D. 1867.

JOHN O. WHEELER,
U. S. Com'r, Dist. Cal'a.

Endorsed: Filed Aug. 26, 1867. Geo. C. Gorham, cl'k. By John O. Wheeler, dep. Tully R. Wise, proctor.

7 District Court of the United States for the district of California.

Stipulation.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 26th day of August, in the year of our Lord one thousand eight hundred and sixty-seven, by the Saucelito Water and Steam-tug Co. and George Clark against the ship "Blackwall," for reasons and causes in said libel mentioned, and the said libellants and James D. Farwell, his sureties, parties hereto, hereby consenting and agreeing that in case of default or contumacy on the part of the said libellants or his sureties, execution may issue against their goods, chattels and lands, for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the said libellants above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal by the Appellate Court.

Taken and acknowledged this 26th day of Aug'st, 1867, before me—

JOHN O. WHEELER,
United States Commissioner.

8 DISTRICT OF CALIFORNIA, *ss*:

James D. Farwell, parties to the above stipulation, being duly sworn, do depose and say, each for himself, that he is worth the sum of five hundred dollars over and above all his debts and liabilities.

JAMES D. FARWELL.
B. F. LEE.

Sworn to this 26th day of August, 1867, before me—
JOHN O. WHEELER,
United States Commissioner.

Endorsed: Filed this 26th day of August, 1867. Geo. E. Gorham, clerk; per John O. Wheeler, dept.

9 *Monition.*

DISTRICT OF CALIFORNIA, *ss*:

The President of the United States of America to the marshal of the United States for the district of California, greeting:

Whereas a libel hath been filed in the District Court of the United States for the district of California, on the 26th day of August, in the year of our Lord one thousand eight hundred and sixty-seven, by the Saucelito Water and Steam-tug Goliah Company and George Clark, against the ship "Blackwall," her tackle, apparel and furniture and cargo, for the reasons and causes in said libel mentioned, and praying the usual process and monition of the said court in that behalf to be made, and that all persons interested in the said ship or vessel, her tackle, &c., may be cited in general and special to answer the premises, and all proceedings being had, that the said ship or vessel, her tackle, &c., may, for the causes in the said libel mentioned, be condemned and sold to pay the demands of the libellant.

You are therefore hereby commanded to attach the said ship or vessel, her tackle, &c., and to detain the same in your custody until the further order of the court respecting the same, and to give
10 due notice to all persons claiming the same, or knowing or having anything to say why the same should not be condemned and sold, pursuant to the prayer of the said libel; that they may be and appear before the said court to be held in and for the district of California, on the 10th day of September, at eleven o'clock in the forenoon of the same day, if the same day shall be a day of jurisdiction; otherwise on the next day of jurisdiction thereafter, then and there to interpose a claim for the same, and to make their allegations on that behalf. And what you shall have done in the premises do you then and there make return thereof, together with this writ.

Witness the Honorable Ogden Hoffman, judge of said court, at the city of San Francisco, in the district of California, this 26th day of

August, in the year of our Lord one thousand eight hundred and sixty-seven, and of our independence the ninety-second.

[SEAL.] GEO. C. GORHAM, *Clerk.*
By JOHN O. WHEELER,
Deputy Clerk,
TULLY R. WISE,
Proctor for Libellant.

[50-cent U. S. rev. stamp, cancelled.]

In obedience to the within monition, I attached the vessel therein described on the 26th day of August, and have given due notice to all persons claiming the same that this court will, on the 10th day of September, (if that day should be a day of jurisdiction, and if
11 not on the next day of jurisdiction thereafter,) proceed to the trial and condemnation thereof, should no claim be interposed for the same.

Dated Aug. 26, 1867.

C. W. RAND.
U. S. Marshal.
By G. F. WORTH,
Deputy.

Endorsed: Filed Sept. 10th, 1867. Geo. E. Whitney, clerk; by S. Neall, deputy.

12 District Court of the United States for the district of California.

Claim.

THE SAUCELITO WATER AND STEAM-TUG Company and George Clark
vs.
THE SHIP BLACKWALL, HER TACKLE, apparel, and furniture and cargo.

UNITED STATES OF AMERICA:

And now comes before said court James C. Creary, of 78 Clementina st., San Fr'co, and claims the said ship, her tackle, apparel and furniture is owned by Geo. West, of London, England, all of , and that the cargo of said ship is owned by Bell, Nott & Co., of Liverpool; and that, according to his best knowledge and ability, no other person is the owner thereof, and that he, the said Creary, is the master of said ship, and is the lawful bailee thereof and of the cargo thereof for said owners; that he, said Creary, is the agent of said owners of said ship and cargo, and duly authorized to make this claim.

Wherefore he prays that said ship, appurtenances and cargo, may be delivered to him upon his entering into such stipulation therefor as this hon. court shall order in the premises.

(Signed) JAMES C. CREARY.

13 DISTRICT OF CALIFORNIA, *ss:*

Sworn to this 27th day August, A. D. 1867, before me.

JOHN O. WHEELER,
U. S. Com'r, Dist. Cal.

Endorsed: Filed August 27, 1867. Geo. C. Gorham, clerk. By By Jno. Wheeler, D. C.

14 District Court of the United States for the district of California.

UNITED STATES OF AMERICA:

Whereas a libel was filed in this court on the 26th day of August, in the year of our Lord one thousand eight hundred and sixty-seven, by the Saucelito Water & St.-tug Goliah Co., et al., against the ship Blackwall, her tackle, etc., for reasons and causes in said libel mentioned; and whereas James C. Creary has filed his claim to said ship, and the said James C. Creary and Henry P. Blanchard and Henry B. Williams, his sureties, parties hereto, hereby consenting and agreeing that, in case of default or contumacy on the part of the said claimant or his sureties, execution may issue against their goods, chattels and lands, for the sum of five hundred dollars:

Now, therefore, it is hereby stipulated and agreed, for the benefit of whom it may concern, that the undersigned shall be, and each of them is, bound in the sum of five hundred dollars, conditioned the said claimant above named shall pay all costs and charges that may be awarded against them in any decree by this court, or in case of appeal, by the Appellate Court.

HENRY P. BLANCHARD.
H. B. WILLIAMS.

Taken and acknowledged this 27 day of Aug., 1867, before me.

JOHN O. WHEELER,
U. S. Commissioner.

15 Endorsed: Filed the 27th day of August, 1867. Geo. C. Gorham, clerk. Per John O. Wheeler, d. c.

16 District Court of the United States for the northern district of California.

Bond.

Know all men by these presents, that we, James C. Creary and Henry P. Blanchard and Henry B. Williams, as sureties, are held and firmly bound unto Chas. W. Rand, esquire, marshal of the United States for the northern district of California, in the sum of fifteen thousand dollars, to be paid to the said Chas. W. Rand, for the payment of which, well and truly to be made, we bind ourselves and

each of us, our and each of our heirs, executors and administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated the 27th day of August, in the year of our Lord one thousand eight hundred and sixty-seven.

Whereas a libel has been filed in the District Court of the United States for the northern district of California, on the twenty-sixth day of August, in the year of our Lord one thousand eight hundred and sixty-seven, by the Saucelito Water & St.-tug Goliah Co., and Geo. Clark, libellants, against the ship Blackwall, her tackle, etc., and cargo, for salvage, as prayed for in said libel, dollars, on which process of attachment has been issued, and the said ship is in custody of the marshal under the said attachment, and James C. Creary has applied for a discharge of said ship from the custody of the marshal, and has filed a claim claiming the said as owners, and has filed a stipulation for the claimants' costs, pursuant to the rules and practice of the said court: Now, therefore, the condition
17 of this obligation is such, that if the above-bounden James C. Creary, H. P. Blanchard and H. B. Williams, shall abide by and perform the decree of this court, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

[SEAL.] JAMES C. CREARY.
[SEAL.] HENRY P. BLANCHARD.
[SEAL.] H. B. WILLIAMS.

Sealed and delivered and taken and acknowledged this 27th day of Aug., 1867, before me.

JOHN O. WHEELER,
U. S. Commissioner.

UNITED STATES OF AMERICA,
Northern District of California, ss:

Henry P. Blanchard and Henry B. Williams, being duly sworn, deposes and says, each for himself, that he is worth the sum of fifteen thousand dollars over and above all his just debts and liabilities.

HENRY P. BLANCHARD.
H. B. WILLIAMS.

Sworn to this 27th day of Aug't, A. D. 1867.

JOHN O. WHEELER,
U. S. Commissioner.

I approve of the sufficiency of the sureties to the within bond.

Dated at San Francisco, this 27th day of Aug't, 1867.

TULLY R. WISE,
Proctor for Libellant.

Endorsed: Filed Aug. 27, 1867. Geo. C. Gorham, clerk. Per John O. Wheeler, deputy.

18 In the District Court of the United States in and for the district of California.

Claim and answer.

THE SAUCELITO WATER and Steam-tug Company and George Clark *vs.* THE SHIP BLACKWALL.	In admiralty.

To the Hon. Ogden Hoffman, judge of the District Court of the United States for the district of California:

The claim and answer of James C. Creary, of said district, master of the ship Blackwall, intervening on behalf of the owners of said ship, her tackle, apparel and furniture, and of the owners of the cargo thereof, for the protection of the interest of such owners of said ship, &c., and said cargo, to the libel of the Saucelito Water and Steam-tug Company and Geo. Clark, alleges as follows:

First. That the said Creary claims the said ship Blackwall, her tackle, apparel and furniture, and also her cargo, as master of said ship and as bailee thereof.

Second. That none of the owners of said ship, &c., or of her cargo, are within the jurisdiction of this court.

Third. That he is entirely ignorant of the matters alleged in the first article of said libel contained

19 Fourth. That on the night of the 24th and morning of the 25th day of August, A. D. 1867, the said ship Blackwall was being loaded and at anchor in the waters of the bay of San Francisco, and within the corporate limits of the city and county of San Francisco, and off Calwell's wharf, in said city and county; it is true that on the night of the 24th and 25th days of August the said ship was on fire; that he believes the same was set on fire by some incendiary unknown; it is true that said ship and her cargo were in danger of being destroyed by fire; it is not true that said ship or her cargo would have been destroyed but for the exertions of said steam-tug or her captain or crew; it is not true that said George Clark voluntarily or willingly went with said steam-tug Goliah to the assistance of said ship Blackwall, but the truth concerning the alleged assistance rendered by said steam-tug, her captain and crew is as hereinafter stated. Denies, and it is not true, that said steam-tug Goliah and her captain and crew, or either, succeeded, after great or any trouble, or at great or any risk to said tug, in quelling or subduing the flames then burning said ship; but the truth in reference thereto is as hereinafter averred; it is true and respondent avers that after said fire was subdued said steam-tug did carelessly, negligently and unskilfully tow said

20 ship to a mud bank or mud flat off Cornwell's wharf aforesaid, and avers that the same was not a place of safety, but was a mud flat and dangerous place where she grounded and became fast in

the mud; that there was no necessity or good reason for towing said ship on said mud flat, and it cost the owners of said ship a large sum of money, to wit, $150, and which was necessarily expended by said master to remove said ship from said mud flat, and tow her to a place of safety, to wit, at Vallejo street wharf, and which was necessarily expended by said master to remove said ship from said mud flat and tow her to a place of safety, to wit, at Vallejo street wharf, and which expense would not have been incurred had not said steam-tug improperly towed and left said ship in said mud bank.

It is not true that said steam-tug was greatly or in any manner endangered in her alleged efforts to subdue said fire; it is not true (as he is informed and believes) that the (said steam-tug) twice caught on fire; he avers that such alleged fires were immediately put out and subdued by the fire department of San Francisco.

It is not true and he denies that libellants or either of them are entitled to any share of said ship or cargo for the salvage or by reason of any matter or thing in said libel alleged.

21 Fifth. This deponent alleges that after the said ship was known to be on fire said captain and crew of said steam-tug neglected to proceed to the assistance of said ship until he and they were ordered so to do by F. E. R. Whiting, then chief engineer of the fire department of that certain municipal government, duly created and existing by the name of the city and county of San Francisco; that after an alarm of fire had been sounded by the City Hall bell of said city and county, said chief engineer and two steam fire engines belonging to said city and county, viz: Nos. two (2) and four, (4,) with the members of the fire department attached to such engine and a supply of fire hose, promptly proceeded to the assistance of said ship; that upon arriving at Broadway wharf, where said steam-tug was then lying, said Whitney, as he lawfully might, directed and required said captain and crew of said steam-tug to receive said steam fire engines, hose and firemen on board of said steam-tug and convey the same to the assistance of said ship; that in compliance with such request, and not otherwise, said steam-tug Goliah, her captain and crew, at 5 30 a. m. of the 25th of August, 1867, proceeded to the assistance of said ship Blackwall; that the flames, which were then consuming said ship, were wholly subdued by the exertions of said Whitney and said members of said fire department, aided by the

22 officers and crew of the United States ship "Saranac" and by the harbor police of said city and county; that the only aid or assistance rendered by said Goliah or her captain or crew in subduing the flames in said ship was in conveying said steam fire engines and said members of the fire department as aforesaid, and lying near enough to said ship Blackwall to enable said steam fire engines to throw water on the flames.

Sixth. That as respondent is informed and believes and therefore avers, the captain and crew of said Goliah, or some one of them, took from said Blackwall in the progress of their alleged attempt to save her a rope belonging to said Blackwall 4½ inch × about 45 fathoms, of the value of $50, which has not been returned to said ship or said master.

18 In the District Court of the United States in and for the district of California.

Claim and answer.

THE SAUCELITO WATER and Steam-tug Company and George Clark *vs.* THE SHIP BLACKWALL.	In admiralty.

To the Hon. Ogden Hoffman, judge of the District Court of the United States for the district of California:

The claim and answer of James C. Creary, of said district, master of the ship Blackwall, intervening on behalf of the owners of said ship, her tackle, apparel and furniture, and of the owners of the cargo thereof, for the protection of the interest of such owners of said ship, &c., and said cargo, to the libel of the Saucelito Water and Steam-tug Company and Geo. Clark, alleges as follows:

First. That the said Creary claims the said ship Blackwall, her tackle, apparel and furniture, and also her cargo, as master of said ship and as bailee thereof.

Second. That none of the owners of said ship, &c., or of her cargo, are within the jurisdiction of this court.

Third. That he is entirely ignorant of the matters alleged in the first article of said libel contained

19 Fourth. That on the night of the 24th and morning of the 25th day of August, A. D. 1867, the said ship Blackwall was being loaded and at anchor in the waters of the bay of San Francisco, and within the corporate limits of the city and county of San Francisco, and off Calwell's wharf, in said city and county; it is true that on the night of the 24th and 25th days of August the said ship was on fire; that he believes the same was set on fire by some incendiary unknown; it is true that said ship and her cargo were in danger of being destroyed by fire; it is not true that said ship or her cargo would have been destroyed but for the exertions of said steam-tug or her captain or crew; it is not true that said George Clark voluntarily or willingly went with said steam-tug Goliah to the assistance of said ship Blackwall, but the truth concerning the alleged assistance rendered by said steam-tug, her captain and crew is as hereinafter stated. Denies, and it is not true, that said steam-tug Goliah and her captain and crew, or either, succeeded, after great or any trouble, or at great or any risk to said tug, in quelling or subduing the flames then burning said ship; but the truth in reference thereto is as hereinafter averred; it is true and respondent avers that after said fire was subdued said steam-tug did carelessly, negligently and unskilfully tow said

20 ship to a mud bank or mud flat off Cornwell's wharf aforesaid, and avers that the same was not a place of safety, but was a mud flat and dangerous place where she grounded and became fast in

the mud; that there was no necessity or good reason for towing said ship on said mud flat, and it cost the owners of said ship a large sum of money, to wit, $150, and which was necessarily expended by said master to remove said ship from said mud flat, and tow her to a place of safety, to wit, at Vallejo street wharf, and which was necessarily expended by said master to remove said ship from said mud flat and tow her to a place of safety, to wit, at Vallejo street wharf, and which expense would not have been incurred had not said steam-tug improperly towed and left said ship in said mud bank.

It is not true that said steam-tug was greatly or in any manner endangered in her alleged efforts to subdue said fire; it is not true (as he is informed and believes) that the (said steam-tug) twice caught on fire; he avers that such alleged fires were immediately put out and subdued by the fire department of San Francisco.

It is not true and he denies that libellants or either of them are entitled to any share of said ship or cargo for the salvage or by reason of any matter or thing in said libel alleged.

21 Fifth. This deponent alleges that after the said ship was known to be on fire said captain and crew of said steam-tug neglected to proceed to the assistance of said ship until he and they were ordered so to do by F. E. R. Whiting, then chief engineer of the fire department of that certain municipal government, duly created and existing by the name of the city and county of San Francisco; that after an alarm of fire had been sounded by the City Hall bell of said city and county, said chief engineer and two steam fire engines belonging to said city and county, viz: Nos. two (2) and four, (4,) with the members of the fire department attached to such engine and a supply of fire hose, promptly proceeded to the assistance of said ship; that upon arriving at Broadway wharf, where said steam-tug was then lying, said Whitney, as he lawfully might, directed and required said captain and crew of said steam-tug to receive said steam fire engines, hose and firemen on board of said steam-tug and convey the same to the assistance of said ship; that in compliance with such request, and not otherwise, said steam-tug Goliah, her captain and crew, at 5 30 a. m. of the 25th of August, 1867, proceeded to the assistance of said ship Blackwall; that the flames, which were then consuming said ship, were wholly subdued by the exertions of said Whitney and said members of said fire department, aided by the officers and crew of the United States ship "Saranac" and by

22 the harbor police of said city and county; that the only aid or assistance rendered by said Goliah or her captain or crew in subduing the flames in said ship was in conveying said steam fire engines and said members of the fire department as aforesaid, and lying near enough to said ship Blackwall to enable said steam fire engines to throw water on the flames.

Sixth. That as respondent is informed and believes and therefore avers, the captain and crew of said Goliah, or some one of them, took from said Blackwall in the progress of their alleged attempt to save her a rope belonging to said Blackwall 4½ inch × about 45 fathoms, of the value of $50, which has not been returned to said ship or said master.

That all and singular the premises are true. Wherefore the respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise law and justice to administer in the premises.

PATTERSON, WALLACE & STOW,
Proctors for Respondent.

Sworn to and signed before me this 7th day of September, A. D. 1867.

WM. H. PATTERSON,
Advocate.

Service of a copy of the writhin accepted this 9th day of Sept., A. D. 1867.

TULLY R. WISE,
Proctor for Libellants.

Endorsed: Filed Sept. 9th, 1867. Geo. F. Whitney, clerk. By J. Neal, d. c.

23 At a stated term of the District Court of the United States for the district of California, held in the city of San Francisco, on Tuesday, September 10th, 1867.

Present, Hon. Ogden Hoffman, district judge.

Order on return of monition.

THE SAUCELITO WATER AND STEAM-TUG CO. *& al.*
vs.
THE SHIP "BLACKWALL," ETC.

And now at this day, on motion of Tully R. Wise, esq., proctor for libellants herein, ordered that the monition returnable this day be filed, and that proclamation be, and it was accordingly made. Ordered that the default of all parties not in court be and the same is hereby entered.

And on motion of W. H. Patterson, esq., proctor for the claimants herein, ordered that this cause be set for trial on Wednesday of next week.

24 *Judges' notes of testimony.—Salvage.*

THE SAUCELITO WATER AND STEAM-TUG CO.
vs.
THE SHIP BLACKWALL, ETC.

George Clark, master mariner for eight years; master of steam-tug Goliah; she is 162 f't long, 30 f't beam, 7 feet deph of hold, 265 tons, single deck, 500 horse-power, 50 inch feet cylinder, 8 f't stroke. Her value in August, 1867, was about $80,000; she cost 60,000 in gold

about 15 mo's ago. She is the largest steam-tug here. I think no other steam-tug has room enough on her decks to take the fire engines on board. My crew consisted of five persons, engineer, fireman, deck hands and myself.

On Saturday, Aug, 24, '67, was called by deck hand; told me was a ship on fire in the harbor. I was in bed at home; told him to go down and have steam got up. He said the policeman had been there and told the fireman, and the fires had been started. She was at Broadway wharf; she had been there about 24 hours. I sent him for engineer; went to boat; asked for Mr. Whitney, ch. of fire department; had seen the engines on Davis between Broadway and
25 Vallejo. I was on south side of B'way wharf, ½ way up the dock. Found Mr. Whitney; told him to get his engines on Broadway wharf; found him ½ way up the wharf; he did not reply to me, did not say a word to me. He first wanted the tug to come into the ferry wharf; told him the Goliah could not get in, and to bring the engines to Broadway wharf; he then had two steam fire engines down. We backed down alongside of Antelope and rigged gang plank to her deck, and across it on to our stern. The foreman, with the assistance of my men, got the engines on board; they weighed some five tons a piece. We immediately went out to the Blackwall. Some of the firemen thought it was too late to save the vessel, and it was dangerous. The vessel lay some 7 or 800 yards from the wharf; she was in 8 to 10 fathoms. Mr. Whitney, the fire marshel, Durkee, and 1 and 2 assistants I think, and the captain, and as captain of each engine; about 20 in all. We got off about ¼ befor 6 a. m. I went off my own volition, without any communication with agents of ship. The Blackwall when I put out looked as if she was going to burn up; her houses were on fire, flames reached nearly to her tops. I ran alongside, got out my tow line, made it fast to end of her flying jib-boom, so as to keep her head; the engines were on the after part of
26 my boat; could not move them from aft forward. We then got a stern line out to her main chains and hauled her on Blackwall's port side, the way lying across the tide. It was nigh water slack; my men fastened the stern line; the tow line was passed on board, and some of the Saranac's crew, who were there, fastened. They had abandoned the ship aft; might have been one or two abaft the fire; there were 10 or 12 boats around taking of crew of Blackwall. The fire seemed to be between decks around the foremast, but the houses on deck were on fire. The forward house reached from foremast to main hatch; the whole of it was on fire.

The cabin ran from mizzen mast; it was not on fire. The foremast was on fire 20 feet above deck; we lay right alongside—had to be there in order to work the engines. There was great danger; our wheel-house came right next to her bulwarks, on fire; there was great danger of her foremasts going; if it had fallen on our boiler it might bust it, and lives would have been lost. There would have been danger of getting a fire if we had not had the engines and our donkey ready to put it out. Gave orders to have axes ready to cut away her port rigging, so that mast might fall away from us; did not know

how much it was burnt at the foot; considered it very dangerous.
27 The captain of the Blackwall did not come on board of us while we were in the steamer. We gave the engines all the fresh water we had, 160 galls. After they got the fire under they got water from the ship. The engines got to work very promptly; had four streams on her. They worked more than an hour, I should think. I was attending to the boat and getting ship's anchor. As soon as we got the fire down we raised anchor; they wanted to unshackle and slip it; I said we could save it—we did so. Hoisted it by the windlass; took Blackwall in tow on to a mud bank off Cowell's wharf; just before I left her they suggested I should take her to a wharf; told them I would be there at high tide to take her in; went outside and when I came back the Rescue was alongside of her.

The Blackwall was about 1,000 tons, deeply laden with wheat, crew on board, ready for sea. Left her on mud banks about ten o'clock. Hatches were taken off to see that there was no fire below. Carried the engines back to Broadway wharf; helped to get them ashore. I put some sheet iron under furnaces to protect our decks from coals from engines. The heat was very intense when we first went alongside.

The steam-tug Lookout got up steam and run out, but when she saw us she turned back; she could not have taken these engines on board; no room for them. It was impossible to save the ship unless we had
28 gone there with engines. I think in ½ hour more she would have burnt to water's edge; if she had had rope rigging, think she would have burnt any way. Two or three of the Saranac's people were on board, and the Blachwall's crew. They had been aft and they had left her. They rowed around, got on board of us and thence to bow of vessel. They could effect nothing. They seemed to have abandoned her, so far as fires was concerned; continually made headway against them. I remained on mud bank until captain said I could go. The mud bank where I put her was the best place in the harbor. I put her there by direction of a pilot whom we had on board; Chief Whitney also advised; it seemed to be acquiesced in by every one. She was from 50 to 80 feet from the wharf.

Cross-ex'd.

My name is used in the libel; it is for benefit of Saucelito Water Co.; claim no interest. When I first went to wharf there was a good many around; Durkee may have been there. One of the harbor police had been on board and told them there was a ship on fire, and to get up steam; they did so; they have general orders to get up steam at once in case of collision or accident; wood always in paper, ready to light; usual price 25 to $30 per hour. The price for towing vessels with pilots is ½ pilotage without full pilotage.
29 The pilotage is $7 per foot, 4 cents per ton in gold for vessels over 510 tons. We are generally 2½ or 3 hours in towing vessels out.

I arrived at Goliah a little after 4; sailed from wharf at ¼ before 6; we had water on the fire at 6 o'c'k; we got up her anchors about 8 o'clock; I think took more than ½ an hour to get in; we went in very slow; we could have run her up 2 feet higher. We stopped engines before she took the bottom. The danger from masts arose from masts being on fire below. I feared it was burnt more than it probably was. I don't think the men could have made the mast fall either way they chose. When we came alongside they could not go near the fire; they were all on the topgallant forecastle. We had a donkey engine and buckets to put out fires. The fire department took entire charge after we got alongside; they worked well, too. We have hose for our donkey to throw water on any part of our boat. The Goliah was in good condition; she was repaired about a month afterwards; put new flues in; they were shut up; we could get steam without them; she was good for all practical purposes; put in about ½ of flues new.

Charles McKee, an engineer of the Goliah:

30 Our wheel-house took fire; we were alongside of ship's bulwarks; we turned hose on and extinguished it; she was on fire on two occasions. The tug had just begun to make steam when I got down to her; it was near 5 o'cl'k; we made steam as quickly as possible; we were about an hour and fifteen minutes getting up steam; we had cold water that morning; we had come in from sea the night previous. It usually takes us one hour and ¾ to get up steam. I was called by one of the deck hands; I was at my residence, corner Filbert and Dupont sts.; when we came alongside, the forward house was all in a flame, and the flames running up mast; the captain suggested to me the cutting of port lanyards, so that mast might fall to starboard; I didn't like the looks of the mast. I the mast or a spar had fallen across the steam pipe it would have disabled the engine in toto; it would probably have scalded everybody around. I had three axes ready to cut the lanyards at any moment. The streams cut the fire down pretty quick; in about 15 minutes the men could get on board.

Cross-ex.

The fire did not burn through the wheel-house; I think the firemen got the fire under so that they could get on board in about 15 minutes.

31 Albert Richardson, deck hand:

Saw the Goliah on fire on the starboard paddle-box, and forward on the guard; we put it out with buckets; man sung out from ship to look out for mast, as it might fall; Capt. Clark took no notice, but kept the boat alongside the ship.

Francis Murphy, pilot:

Went off to Blackwall on the Goliah; she was towed in on to the flats abreast of Cowell's wharf; I counselled with Capt. Clark as to best place to put ship; he left it with me; I talked it over with the

ch. engineer, Whitney, and I believe with Durkee; I thought all things considered it was the best place; the mud very soft, water near for engines; in my opinion no safer place anywhere around the harbor. I think the partners around the mast were burnt through; didn't take particular notice; merely looked around. I didn't think the ship could be saved when I got there; there was danger, we thought, of the masts or spars falling. We lay right under the ship's foreyard; I advised the capt. to put the tug as far forward as possible. We could not drop aft, so as to be abreast of the main or mizzen mast, because the wind was from forward, and the tug would have been more exposed. Some one on board, the mate, I think, warned us to look out for .

32 *Cross-ex'd.*

I don't think the mast would have come over, unless it was more burnt than it subsequently proved to be. I think the back stays were gone on the port side and starboard. I think the men on board could have controlled the fall of the mast. The shrouds were good. The wind was westerly; a pretty strong breeze; a 4-knot breeze. The ebb was just making; she was swinging to it. The tide had fallen about an hour when we put her in the mud; it was between 7 and 8. A little fire was left; didn't know how far aft it had got. Ordered men from shore to take main hatch off. We left the wharf somewhere about 6 o'cl'k. I think the foreyard was not afire. The maintopgallant sail was on fire; ordered a man up to cut it away.

Certificate of incorporation of Saucelito Steam-tug and Water Co. offered in evidence.

J. H. Chapman, an engineer of No. 2 engine:

She was one of engines on board the Goliah; heard hall bell alarm about 3½ a. m.; reached cor. B'way and Davis in about 10 minutes; we could not see the flames. Heard from the chief that a ship was on fire. We got off about 6 o'cl'k. We went round to B'way wharf about 5. It took us about an hour to get around and
33 get the engines on board; perhaps it took ½ (half) an hour. The engines weigh about 3½ tons. I saw a black smoke about 4 o'cl'k; flames broke out about ½ an hour before the steamer got off; it looked as if she would burn up unless she got assistance pretty quick. When we first got there I thought it looked pretty bad. I never thought about the masts falling. We had four streams on immediately. I think we could have saved her if we had arrived 20 minutes before; she would have sunk.

Cross-ex.

Did not see any danger to the tug.

Admitted that libellants own the steam-tug and employed her crew.

Stephen Cord, president of St.-tug Co.:

We consider the Goliah worth $50,000 in gold. 140 or 150 f't long–30 or 40 f't broad. No tug in the harbor could have done this service; I don't think any of them could have carried one of the engines; they might have taken one on board, but would have had no room to work them.

Don't think the Rescue could have put out this fire with her own apparatus.

34 I got a note from the consignees of ship on Monday after the fire, asking for my bill.

I left orders with Capt. Clark to have the vessel libelled at once if they attempted to move the cargo.

When I returned to town on Monday, found the ship had been libelled.

Henry B. Williams, one of the consignees of Blackwall:

She is about 1,200 tons burthen; English ship; don't know her age; came last from Panama in ballast; don't know her value. Repairs are not completed. Nathan Coombs is ship carpenter. She had 28,501 sacks of wheat, 3,698,525 lbs. She was ready for sea; had hauled into stream. The wheat was worth from $1 80 to $1 85 per 100 lbs. in gold. Freight was not prepaid. Faulker, Bell & Co. represented the cargo. The tug lay by the ship until I told captain we had no further occasion for his services. All the cargo was sold except 6,300 bags. Sold at auction for $45,000 in gold. A bag contains 130 lbs.

James C. Creary, captain of the Blackwall:

She was built in 1848; registered 1,190 tons. She had in 1,650 tons; rates A No. 1. She was insured for $50,000 in green-
35 backs. I think that is her full value. She had in stores for a voyage to Liverpool, worth about $2,000.

Cross-ex'd.

The ship belongs to London. One part owner lives there. My carpenters' bill will amount to $15,000. The total repairs will sum up to $25,000 in gold. The expenses on cargo will be about $7,000. Possibly the whole expenses will amount to $40 to 45,000 on ship and cargo. I examined the foremast after the fire. The fastenings are burnt in from 1 inch to ½; wire rigging. There was not the slightest danger of the most falling at that time. The lanyards were burnt and the service on the rigging.

Mr. Cooks in carpenter. We could not get an estimate. Could not tell how much you would have to put in until you cut away. Work done by the day, by advice of agent of underwriters. Fire

said to have originated on port side of between decks abreast of foremast. The foremast and mainmast have been taken out.

They were made masts. Put in single sticks. I think the latter are the strongest. It would have cost more to strip the mast and take the bands off than to put in new sticks. The other repairs were putting in knees, beams, waterways, bulwarks.

The masts bought $20 apiece.

36 George Darden has charge of rigging. A portion of lanyards on port side was entirely burnt. Some of the head sides were burnt in the attempt to smother the fire. The expense on cargo is discharging, hauling to warehouse, storage, expense on selling damaged portion, carting the rest back to ship. This last was about $1 25 per ton. The expense of discharging is ordinarily 50 cents per ton; on Sundays 1 doll. per ton. The other bills are for painting, caulking, scraping, fitting up galley, stores.

The painting, I estimate at 700; caulking in carpenters' bill, galley, about 300.

Can't estimate carpenter's tools. Can't say if it would cost $50. Can't say what stores must be replaced. Bought some 4 or 5 sails. Can't say what they will cost. 3 boats burnt and 2 store. Have attended to these repairs myself. Have consulted Captain Fletcher, agent of underwriters. The ship was surveyed by Capt. Fletcher, Capt. Waterman, Mr. Bingot.

James D. Walker:

Am one of shippers of cargo. It cost $67,498 08 on board.

Samuel Davis:

Am foreman of No. 2 engine. I went out there with
37 No. 2. I thought it a pretty bad place. A great risk in going there. I saw when I got on board that the foremast was nearly burnt through. If we had lain further aft we could not have worked on account of the flames. We took the best position we could. The heat was very great when we went alongside; some of the men were drunk.

Cross-examined.

The mast looked to me as if it were burnt in some 5 or 6 inches.

Capt. Murphy recalled:

The men I saw on board looked as if they had been drinking hard or were very tired; those I spoke to; could get nothing out of the carpenter and 1st or 2nd mate.

Peter O'Riley:

Have been a fireman in New York and San Francisco, about 20 years; am a foreman on No. 2. Have seen fires on board of ships. The ship looked as if she would burn down if we didn't get to work quick on her. When we came alongside, should think there was danger from the foremast. We fireman don't look out exactly for danger.

The people on board tug did as well as it could be done. The flames rose above the deck some 20 ft. around the foremast
38 and mainmasts. We got on board the ship as soon as we could. Had to go between decks to put it out. It was very warm. The tug caught on fire. We turned the pipe on it, put it out; afterwards saw them at work with pails.

Claimant's call.

F. E. R. Whitney, ch. engineer of fire department:

I got to the wharf between 3 and 4 a. m. I enquired what co's were present; and as to cause of alarm ascertained that the Blackwall was on fire; went with police officers Gordon to the Goliah to get them to fire up and put us alongside. Gordon sung out; the fireman or watchman answered the call. This was the first information any one had of fire on board the Goliah.

I told him I wanted him to fire up his boat and put us alongside. He said the captain and engineer were on shore. Gordon said he could fire up and they could be sent for. I then asked how long it would take; he said an hour and ½ at least; told him to get at it once; saw the smoke coming out of the smoke stack shortly afterwards; told the first assistant to send every one home except Nos. 2 and 4; sent 2 assistants on board Blackwall. He came back and reported we could save her. I then ordered Nos. 1 and 2 to back down to
39 Ferry slip. When Capt. Clark came down, sent 1st ass't to ascertain if they hadn't steam enough to get around to slip. He couldn't find capt. or engineer, but was told that the tug drew to much water to come into slip, and that we must come to B'way wharf. I went with 1st ass't to Goliah berth and met Capt. Clark for first time. We measured her, and found no room to get . Captain Clark suggested taking engines across decks of Antelope; we did so; got engines aboard about 6 or a little before.

When we got alongside there was considerable fire between the fore and mainmast; had our hose charged ready to put out any fire outside before we made fast; we did so. The men on board attended to the lines, and did it well; there was no danger at all in attaching the lines; there was no fire where either the bow or stern lines were made fast; we played on the fire a ½ minute before we made fast; 4 streams threw a thousand gallons, perhaps; the water was coming out of the nossels when were fifty rods off, men stationed. There was no danger of the mast falling; tried to make me think so, but I didn't see it; the captain and Mr. Murphy both said so.

It was not one minute after we were attached before we were aboard, and not another minute before we were off the fore-
40 castle and on deck, sweeping it on both sides.

There was no danger of the Goliah taking fire; I don't think she took fire; we could have extinguished instantly any fire that took. We were on deck about 15 minutes, subduing the flames; below we were about ½ an hour; certainly not an hour before everything was subdued. We got the greater part of the water for the

boilers from the tank of the Blackwall. I helped hoist the anchor, also the fireman—police; Engineer Lane, of the "Saranac," and his men, was conspicuous; didn't see the mate of Blackwall there. The flames were all out; there was no reason for moving the ship, so far as the fire was concerned; I did not direct her to be run on the mud flats; there was no reason for it, so far as fire was concerned. She was not run on flats to allow me to get on to her from the wharf. It was suggested that if there was any fire in the skin they might, by running on the flats, use fresh water from hydrants, and I need not keep my engines. I told them very plainly there was no fire on board. There was the usual morning breeze; no waves. When I got within 150 yards I thought we had a very easy thing, we were so well fixed for it. Don't know what facilities the Goliah has for putting out fires. I presume the Rescue could have rendered the same service. The engines took 5¾ feet one way, 7½ the other; all
41 you want is to stand them on their wheels. We took river plates from Mintirin's wharf; Capt. Mitchell, of engine 4, had the forethought to take them.

Cross-examined.

I have never spoken differently about this matter; I thought of setting up a claim for salvage for fire department; did not consult a lawyer; I went to consignee's office; was passing by; saw a gentleman there; told him I had a good mind to make a claim; had no further conversation; I gave up the idea immediately; did not tell my assistants long after that I was negotiating. I was waited on by delegates of the 2 companies; I told them if any one had a claim it was the whole fire department, and that no individual could, with my sanction, receive a dime. Had no further communication with consignees until about a week ago; I never told them what I could prove; never told any one what my testimony would be; I presume I told Mr. Williams on board the tug, the morning of the fire, that I ordered the tug; have never spoken to the counsel about this matter; have conversed with the fire commissioners about the matter. I said to Capt. Clark I wanted Capt. Card to see me; our department is as poor as crows, and I thought we might be benefitted.
42 I should judge the department would get something from Capt. Card's being around among the fire boys. I expect nothing; know of no arrangement by which department is to get anything from the consignees. I think Mr. Murphy suggested the ship's being carried to the flats. I would not have allowed her to be moved so long as she was on fire. I have said that in all probability the Rescue could take one steam engine off; Capt. Clark and myself consulted as to position of steam-tug; I took his opinion about it, as he knew more of tides, &c., than I did. I had no expectation; I became satisfied 3 minutes after I went over the side that there was no danger from the mast. I said to the pilot, for God's sake not to say so to frighten the men; made him go down and satisfy himself.

Gordon, police officer:

Went down with chief engineer; sung out for Henry; he came out; told him a ship was on fire, and to get up steam immediately; he seemed to hesitate; we urged him to fire up and send for cap-
43 tain and chief engineer.

The engines were put on board chiefly by fire department. I had been out to the ship about 3 or 3½ that morning; could see smoke issuing through crevices of the hatches. I think Capt. Clark assisted in getting the engines on board; he suggested taking them across Antelope's decks.

My attention was first attracted by the whistle of the watchman on Broadway wharf; I ran out; he said he thought there was on trouble on board a vessel at Vallejo, as she was ringing her bell; went to Vallejo st.; found it came from a vessel in the stream; fog very thick; took her position as well as I could, intending to board; blew my whistle for officers King and Selby; we got a boatman and went on board; got there a little before 3; saw the flames burst out just before reaching there; they must have put the hatches on, or flames would have continued. Was on board 3 or 4 minutes in charge; left two officers in charge; went towards Saranac; met officer Lane; told him; he told me to tell them on board Saranac to send
44 another boat with plenty of buckets. As I was leaving the Saranac the hall bell struck; I got ashore just in time to meet the ch. engineer.

When tug left wharf it looked rather desperate. She was all of a blaze around the foremast.

James Wigmore:

Am a local police officer; was on board the Blackwall; left the wharf on the Goliah; remained until the fire was put out. I did not consider myself in any danger from the mast. I jumped on the rail the moment the tug struck her; helped to light up the hose. The water came through pipes just before she came alongside.

Thomas Kung:

Went on the Blackwall with officer Gordon, just before engines around the fire seemed to take up the whole space between fore and mainmast. I left the ship before the tug came alongside. I thought it was about time. It was getting very warm. Everybody was out of her except me and the chief mate. I went around and got on board the Goliah 2 or 3 minutes before she came alongside; saw no one on the ship forward.

45 *Cross-examination.*

The crew of the Saranac had all left. Mr. Lane had called them off, at my suggestion, as they could do no more good. There were 10 or a dozen boats around the ship. They were anxious to get on board before the fire spread so much. I told the mate it was time to leave. We could do no more good. It was impossible to go from

poop to forward part of ship; didn't see the tug before I left the ship. The last man I saw on deck was the chief mate.

Charles A. Ackerson:

2d as engineer of the fire department; have been a fireman 12 or 14 years. I never thought of the masts falling. We put on 2 streams at first; one forward and one aft. We put water on the fire before we made fast. I was on board of her before she was made fast. I examined the mast after the fire. It was not burnt 2 inches in any place; apprehended no danger from the mast. Our men were around it on every side. A hole was burnt through
46 between the fore and mainmast about ½ way. The fire was not all out, but was all under control before the anchor was hove out. There was no necessity for moving the vessel on account of fire or the water that was in her; no necessity for running her on mud flats on account of fire. We were about ½ an hour in getting entire control of the fire. I think if we had been an hour later we might have saved the vessel; but she would have been much more damaged. The masts would have fallen.

Cross-examined.

Mr. Whitney and I have talked about the matter.

The libellants recall Capt. Clark:

After we had got the engines off the tug Mr. Whitney called me and said, you must tell Capt. Card I must come on with him. We have got a good thing. It is a salvage, sure.

J. E. Mitchell:

Foreman of No. 4. I found some iron plates on the wharf, and, knowing the engines would drop fire, I took them to protect the boat.

47 Joseph H. Boyle:

Went off on the Goliah; remained on board the tug, didn't see her get on fire; think I would have seen it. I saw no danger to the tug; wasn't on board the tug until the fire was out; saw no danger of masts falling.

George Dougherty:

A rigger. Took down fore and mainmast. They were a little burnt; not enough to endanger them. The foremast was burnt in about 2 inches. Foremast was about 30 inches in diameter, 70 ft. long. The masts are lying somewhere about the docks.

Capt. Creary recalled:

When we got the Blackwall off the flats it was high water. It cost us $150. The steamer parted several lines; about to give it up and wait for night tide; made fast astern; on second trial suc-

ceeded in hauling her off. I got down just after she was hauled on the wharf. There was no necessity of putting her there.
48 She might just as well have gone alongside the wharf. If the wheat had swollen we could have discharged her much more easily. I got this other tug because I saw the Goliah fast to another vessel.

Libellants call John H. Coombs:

The whole repairs for carpenter work came to $16,500 in gold.

The masts are along the wharves. I paid about $30 for them both. We repaired the beams, knees, ceilings, houses, stancheons, rail, masts, caulking.

There was no danger of the masts falling. We used them for hoisting without any rigging.

Henry P. Blanchard:

Am one of the consignees of this ship.

A. T. Fletcher, agent for underwriters:

The carpenter's bill amounts to between 15 and 16,000; the whole bills amount to between $20 to $25,000. This includes merely repairs to ship.
49 3, 4, or 5,000 would be expense of unloading, storing, surveying, &c., cargo.

The Goliah is an old boat, I believe; don't know her value; I suppose 45 or 50,000 if she is in order; I know the Rescue; she would take more than 2 engines; am under the impression she has facilities for putting out fires.

Cross-ex.

The Goliah may be 200 or 250 tons; don't know her length or breadth or depth.

The Rescue has less tonnage but very great power.

My judgement tells me that a vessel of that size could accommodate certainly two, perhaps 6. The engines may possibly be ten feet long and 6 feet wide.

L. Sellinger:

Am one of the harbor police; went on board with Gordon and King about 2 o'clock.

Just before the tug arrived all hands were leaving the ship; smoke so dense aft you couldn't see anything; flames broke out about 20 minutes before tug came. I went over the stern on a rope.
50 Mate left before me in same way; I was the last man on board.

The mate on 3 or 4 occasions expressed fear that foremast would fall; ordered all the men away.

Cross-examined.

The mate went over the stern just ahead of me. The mate went on the tug. I went ashore with some of Blackwall's men. The officers and crew of the Saranac had left before I left.

When the mate told me this, the fire had burst out and we could not get forward; could hardly see one another.

The mate was very particular in counting the crew. They were all aft; had got their things into the boats when the flames burst out; mate ordered the crew into the boats; when they were in, King, the mate, and myself followed. The Saranac's men had previously put the captain's valuables into their boats and pulled off to the Saranac.

W. A. Boole:

Am ship carpenter; know the Blackwall; examined her before she was repaired; am somewhat acquainted with the value of ves-
51 sels. I think the vessel is worth, as she now stands, 40 or 50,000 dollars in gold. Should say 25,000 was a pretty steep bill; told the captain the carpenter work would be about $10,000. Know nothing of expense necessary for new sails, rigging, furniture.

Phineas Hudson:

Am a shipwright; have some knowledge of the value of vessels.

Claimants call Capt. Creary:

The owners telegraphed me and wrote that as the ship was insured for $50,000; it would be better to have her condemned and take the insurance.

M. Griffiths:

Am master of the Rescue; I could have taken 6 fire engines; my boat is 90 feet long on both sides. Pilot house in the middle. My boat lay on Vallejo st. wharf. She was ready for work. I have a large size eight-inch pump on board; I have always supposed I could throw as much as one fire engine. A steamboat could keep
52 her place by aid of her steam. We value the Rescue at 75 or 80,000; we would not sell her at any price.

Cross-ex.

The Rescue is 112 ft. long and 25 ft. broad.

We have 20 feet square abaft engine room and about the same forward. The passages are 6½ ft wide, 90 ft long. I suppose we could run the engines on these passages. If a ship was on fire I would not lay alongside of her.

Endorsed: Filed Oct. 9, 1867. Geo. E. Whitney, clerk. Per S. Neal, d. c.

53 *Order continuing cause.*

At a stated term of the District Court of the United States for the district of California, held in the city of San Francisco, on Wednesday, the ninth October, 1867.

Present, Hon. Ogden Hoffman, district judge.

SAUCELITO WATER & S.-TUG CO.
v.
SHIP "BLACKWALL," ETC.

And now at this day the hearing of this cause is continued from Monday. And the testimony having been closed after arguments of respective advocates having been heard, ordered that this cause be submitted and taken under consideration by the court.

54 At a stated term of the District Court of the United States for the district of California, held in the city of San Francisco on Friday, October 18th, A. D. 1867.

Present, Hon. Ogden Hoffman, district judge.

SAUCELITO WATER & S.-TUG CO.
vs.
SHIP "BLACKWALL," &C.

And now at this day the court renders its opinion in this cause. And it is ordered that a decree be entered in favor of libellants for ten thousand dollars & costs of suit.

55 *Opinion.*

THE SAUCELITO AND STEAMTUG CO.
vs.
THE SHIP BLACKWALL.

About 3 o'clock on the morning of the 24th August the British ship Blackwall, then at anchor in this harbor, was discovered to be on fire. Shortly afterwards the alarm was communicated to the shore, and the fire department of the city called out.

As soon as the cause of the alarm was ascertained, the chief engineer of the fire department with officer Gordon of the harbor police, proceeded to the steam-tug Goliah, then lying at Broadway wharf, and having roused the person in charge, requested him to fire up without delay, in order that the engines might be conveyed on the tug to the burning vessel.

This, after a few moments' hesitation, arising no doubt from reluctance to act without orders, he proceeded to do. Messengers were dispatched to the captain and engineer of the tug, who were asleep at their houses, and every effort made to get steam on the tug as quickly as possible.

56 The captain and engineer were aroused, and at once repaired to the wharf. It being found impractible for the tug to go into the slip where the fire engines lay, two of the latter were

brought around to Broadway wharf, and taken across the deck of the steamboat Antelope, and on to the tug with commendable promptitude and skill.

About 6 o'clock the tug with the two engines on board, together with the firemen, &c., attached to them, moved out of the slip, and in a few minutes were alongside the ship. The fire had by this time made considerable progress. The house on deck between the fore and mizzen masts was on fire, and the flames were mounting nearly half way to the tops.

The ship was also burning between decks, where the fire had first originated. The officers and crew, though assisted by a party from the U. S. ship Lawrence, having found all attempts to subdue the flames abortive, had desisted from further efforts, and had a few moments before the Goliah arrived, left the vessel with their effects in small boats.

57 Without speedy assistance the total destruction of the ship and cargo was inevitable. The measures of the firemen and officers of the tug were taken with great skill and energy.

The hose of the engines were charged, as the tug approached the vessel, and as soon as she was near enough, four streams were directed upon her. The tug, without hesitation or delay, was made fast alongside the Blackwall. The firemen almost instantly mounted her rails, went thence to her forecastle, and from thence to her deck, sweeping the latter with 4 powerful streams, by which the fire was speedily controlled. They then descended to her between decks, and in a little more than ½ an hour the flames were entirely extinguished.

Her anchor was then weighed by the advice of the captain of the tug, and the vessel was towed to the flats near Vallejo st. wharf.

The tug was then dismissed, and the engines were taken to the shore and landed. At the hearing some criticism was made on the conduct of the tug in taking the vessel to the flats instead of to a wharf, where her cargo could readily be discharged. But this course was adopted after full consultation, and with the assent of all.

58 It was thought that there might be some fire still smouldering in the skin of the vessel, and that to take her to a wharf might endanger other shipping. The chief of the fire department seems to have been confident that the fire was entirely extinguished, but the fact could not certainly be known, and the course adopted seems, under all the circumstances, to have been prudent and proper.

The value of the vessel and cargo salved was about $100,000.

The value of the tug was about $50,000. It is evident that the foregoing constitutes a salvage service of a high degree of merit.

The value of the property was large. It was saved not merely from imminent peril, but from certain destruction.

The service was rendered without hesitation and with energy and skill. A total loss of the ship and cargo would have been the consequence of even a short delay. Had the master of the tug, on arriving at his vessel, or when alongside the ship, sought to make terms or stipulate in advance for his compensation, he could have

imposed his own conditions, for at that time all other assistance would have been too late. He was enabled to render it with
59 promptitude from the fact that in contemplation of similar emergencies the furnaces of the tug are always arranged so as to be lighted on a moment's notice, and her captain and crew hold themselves in readiness to turn out at any time of the day or nigh, when called to the assistance of vessels in distress. As to the degree of danger incurred by the tug there is some conflict of testimony. That she was promptly and boldly laid alongside the burning vessel, is undisputed. That she caught fire once or twice is also proved, but this was instantly extinguished, and I cannot think that with the powerful appliances she had on board the danger from this cause was appreciable.

But the chief risk incurred by the tug was from the falling of the mast or spars of the vessel; an accident of this kind might have proved disastrous to the tug, and perhaps to many on board.

The danger was not supposed to arise from the burning of the shrouds, for they were of wire, but from the fact of the mast seeming consumed by the fire, which had been burning between decks for several hours.

As a matter of fact it was found on subsequent examination
60 that the mast was but little burnt, and was in no danger of falling.

The chief engineer of the fire department testifies that he became satisfied very soon after getting on board, that all fears of the masts falling were groundless, and the event proves his judgment to have been correct.

But it is nevertheless certain that these fears were entertained and expressed not only by the officers of the tug, but by Mr. Murphy, the pilot, and by the mate of the ship.

That they are not now for the first time expressed to enhance the merit of the service is further provided by the fact that axes were got in readiness to cut away the shrouds on the portside of the vessel, in order that the mast might fall to the other side.

It may also be observed that the tug encountered the risk of the possible existence of explosive substances on board the vessel, and also that, though it was slight, of her own machinery or that of the fire engines becoming unserviceable, while she lay alongside the vessel.

61 On the other hand it is to be remembered that the tug was not the sole salvor; without her assistance the fire engines would have been powerless to save the ship, but without them the tug's aid would have been ineffectual. In the recent case of "the ship Annapolis" in this court some of the principal cases of salvage allowances under analagous circumstances were cited.

It is unnecessary to recapitulate them here.

None of these cases furnish a rule, for each case must depend on its own circumstances. They at most afford a guide, and show what has been thought under dissimilar but analagous circumstances.

The case of the Traveller v. Hagg, 570, in some particulars resem-

bles the case at bar. The vessel salved in that case was in imminent peril. But the destruction of the Blackwall was certain unless succor had come. In that case as in this, the steamer did not deviate from her voyage to render assistance. She belonged to an agent of Lloyds, and her principal business was that of carrying out anchors, an employment analagous to that of the ordinary employment of the tug.

In both cases the service was of short duration and near to
62 port.

In the case of the Traveller the steamer did not go out on purpose, and there was no extraordinary risk to her or those on board, and the value was about $20,000. In this case the tug went out on purpose, with great alacrity, in the dead of night.

She encountered some real and a considerable apparent danger. Her value was $50,000. In the "Traveller," a little less than 10 pr. ct. was awarded on a value of $60,000.

I think the same percentage on the value of the reserved property would be a fair allowance in the case at bar. The difference in the amounts, on which the percentage is allowed, will compensate for the difference in the merit of the services.

A decree will be entered for $10,000 and costs.

63 At a stated term of the District Court of the United States of America for the district of California, held at the court-room in the city of San Francisco, on Tuesday, the twenty-second day of October, in the year of our Lord one thousand eight hundred and sixty-seven. Present, the honorable Ogden Hoffman, district judge.

Decree.

THE SAUCELITO WATER AND STEAM-tug Company, libellants,
vs.
SHIP "BLACKWALL," &c., *et al.*, George West, and Bell, Nott & Co., claimants.

This cause having been heard on the pleadings and proofs, and having been argued by the advocates of the respective parties, and due deliberation being had in the premises, it is now ordered, adjudged and decreed by the court that libellants do have and recover of the claimants the sum of ten thousand dollars, ($10,000,)
64 with their costs, to be taxed hereon.

And it is further ordered that a summary judgement be ordered against George West and Bell, Nott & Co., claimants, and H. B. Williams and H. P. Blanchard, sureties upon the bond filed for the reelase of said ship and cargo for said amounts, and that libellants have execution therefor.

OGDEN HOFFMAN,
Dist. Judge.

Filed October 22, 1867.

GEO. E. WHITNEY, *Clerk.*
By JOHN O. WHEELER, *Deputy.*

65 In the District Court of the United States in and for the district of California.

Notice of appeal.

THE SAUCELITO STEAM-TUG AND Water Company
vs.
THE SHIP "BLACKWALL" AND James C. Creary, claimants.

SIR: The defendants intend to appeal from the final decree of this court in this cause.

Dated San Francisco, October 26th, 1867.

W. H. PATTERSON,
Proctor for Defendants.

To T. R. Wise, esq., proctor for libellant, and Geo. E. Whitney, esq., clerk of said court.

Endorsed: Filed Oct. 26th, 1867. G. E. Whitney, cl'k; p'r John O. Wheeler, dep.

66 In the Circuit Court of the United States in and for the district of California.

Notice.

JAMES C. CREARY, MASTER AND claimant of the ship Blackwall, her cargo, &c., and the ship Blackwall, appellants,
vs.
THE SAUCELITO WATER AND STEAM-tug Company and George Clarke, appellees.

SIR: Please take notice that the stipulation to be filed by the above-named appellants on the appeal made herein will be executed and given by Henry B. Williams and Henry G. Blanchard, merchants, of 305 Front street, and whose residence is at the Lick House, in the city and county of San Francisco.

And please further take notice that the aforesaid sureties will severally attend at the office of the clerk of this court on Tuesday next, the 29th day of October, A. D. 1867, at one (1) o'clock in the
67 afternoon of that day, to execute said stipulation, and that they will, at the same time and place, justify as good and sufficient sureties herein.

San Francisco, October 26th, A. D. 1867.

Yours, &c.,

WM. H. PATTERSON,
Proctor for Appe lant.

To T. R. Wise, Esq., proctor for appellee.

Endorsed: Filed Oct. 26th, 1867. G. E. Whitney, cl'k; p'r John O. Wheeler, dep.

68 In the District Court of the United States in and for the district of California.

Stipulation on appeal.

THE SAUCELITO WATER AND STEAM-tug Company and George Clarke
vs.
THE SHIP BLACKWALL.

Whereas an appeal has been taken from the decree of this court on the twenty-second day of October, in the year of our Lord one thousand eight hundred and sixty-seven, in a certain cause wherein the Saucelito Water and Steam-tug Company is libellant against the ship Blackwall, her tackle, apparel and furniture and cargo, &c., and James C. Creary, claimant, by the said ship and claimant:

Now, therefore, the stipulators undersigned hereby stipulate in the sum of twenty-one thousand and fifty dollars to pay all damages and costs which shall be awarded against the said appellants by the final decree rendered by the Appellate Court.

HENRY P. BLANCHARD.
WM. H. PATTERSON.

Taken and acknowledged this 31st day of October, 1867, before me.

JOHN O. WHEELER,
U. S. Commissioner.

69 STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Henry B. Williams and Henry P. Blanchard, parties to the said stipulation, being duly severally sworn, each for himself says that he is worth the sum of $21,050 00-1 over and above all his just liabilities.

HENRY P. BLANCHARD.

Sworn to before me this 31st day of Oct., 1867.

JOHN O. WHEELER,
U. S. Commissioner.

Endorsed: Filed Oct. 31st, 1867. P'r Wheeler, dep.

70 UNITED STATES OF AMERICA,
District of California, ss:

I, George E. Whitney, clerk of the United States, district of California, and ex-officio clerk of the District Court of the United States, district aforesaid, do hereby certify the foregoing one hundred and four pages numbered from one to one hundred and four, both inclu-

sive, contain a full, true and correct transcript of the record of proceedings and of the decision and judgement of said court, of the documentary evidence upon which the same is founded on file in my office, in case No. 10, (ten,) on the admiralty docket of said court wherein the Saucelito Steam-tug and Water Company is libellants against the ship Blackwall, etc.

Witness my hand and the seal of said court, affixed at San Francisco this 23d day of November, A. D. 1867.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

71 *Certificate that appeal has been perfected.*

THE SAUCELITO WATER AND STEAM-tug Co., and George Clark, appellees,
vs.
THE SHIP "BLACKWALL" & Co., appellant.
} Certificate of appeal.

I, George E. Whitney, clerk of the U. S. Circuit Court, for the district of California, and ex-officio clerk of the U. S. District Court for said district, do hereby certify that the claimant and appellant above mentioned have perfected their appeal in said cause.

In witness whereof I have hereunto set my hand and affixed the seal of said District Court this 2d day of November, A. D. 1867.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

Filed 20 November, 1867.

GEO. E. WHITNEY, *Clerk.*

72 In the Circuit Court of the United States in and for the district of California.

Appeal.

JAMES C. CREAREY, MASTER AND CLAIMANT of the ship Blackwall, and the ship Blackwall and her cargo, &c., appellants,
vs.
THE SAUCELITO STEAM-TUG AND WATER Company *et al.*, libellants.

To the honorable the Circuit Court of the United States for the district of California.

The appeal of the above named appellants respectfully showeth, that on or about the twenty-sixth day of August, A. D. 1867, the above named libellants, the Saucelito Water and Steam-tug Company, and George Clark exhibited their libel in the District Court of the United States for the district of California, against the said ship Blackwall, her tackle, apparel and furniture and cargo, and

against all persons intervening for their interest therein, claiming over fifty dollars, to wit, ten thousand dollars and upwards, praying, among other things, for the reasons set forth in said libel, that the appellants might be condemned to pay the demands of said
73 libellants and costs in said libel mentioned; that process issued out of said court having been served on said master and said ship, they did on or about the 8th day of September, 1867, file their answer and claim to said libel in said District Court, praying that the said libel be dismissed with their costs in that behalf, as by reference to said libel and the said answer will more fully appear.

That the said cause came on to be heard before the Hon. Ogden Hoffman on or about the 9th day of October, 1867, upon the proofs taken in said cause and adduced by the respective parties, and the said judge having advised thereon, made on the 22d day of October, 1867, a decree or sentence in said cause, whereby it was, among other things, sentenced and decreed that the libellants in said cause recover against the said ship, her tackle, apparel, furniture and cargo, the sum of ten thousand dollars and costs, amounting to $501 50-100. And these appellants are advised that the said decree is erroneous, inasmuch as the said libellants were not entitled to any salvage or compensation in the premises.

And these appellants, for these and other reasons, appeal from the whole of the said decree in favor of the said libellants to the
74 next Circuit Court, to be held in the said district; and on the said appeal they intend to have said cause heard anew in the Circuit Court on the pleadings and proofs in the District Court, and other and new proofs to be introduced in the Circuit Court. And they pray that the said decree and every part thereof may be reversed with costs, or such other decree thereupon made as to the said Circuit Court may seem just, and that the said appellees be condemned to pay to these appellants their costs and damages in the premises. And they further pray that the record and proceedings in the said District Court may be returned to the said Circuit Court.

October 26th, A. D. 1867.

W. H. PATTERSON,
Proctor for Appellants.

W. T. WALLACE, *Advocate.*

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

William H. Patterson, of the city and county of San Francisco, being duly sworn says that on the day of October, A. D. 1867, he served a copy of the foregoing appeal on Tully R. Wise, esq., proctor for the appellees, by delivering the same to him per-
75 sonally.

W. H. PATTERSON.

Sworn to Oct. 26, 1867, before me.

JOHN O. WHEELER,
U. S. Commissioner.

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

Joseph P. Phelan, clerk for W. H. Patterson, the proctor for the appellants herein, of the city and county of San Francisco, being duly sworn says that on the 26th day of October, A. D. 1867, he served a copy of the foregoing appeal on Tully R. Wise, esq., proctor for the appellees, by delivering the same to him personally.

JOS. P. PHELAN.

Sworn to Oct. 26th, 1867, before me.

JOHN O. WHEELER,
U. S. Com'r.

Filed October 26, 1867.

GEO. E. WHITNEY, *Clerk.*
By J. O. WHEELER, *D. C.*

76 At a stated term of the Circuit Court of the United States, for the district of California, pursuant to adjournment, at San Francisco on Monday the 17th day of August, 1868.

Present, Hon. Stephen J. Field, judge.

Order of submission.

THE SHIP BLACKWALL
vs.
THE SAUCELITO WATER AND STEAM-TUG CO.

This cause having been specially set for this day came up for trial, W. H. Patterson, esq., appearing for appellant, and Cutler McAllister, esq., and T. R. Wise, esq., for the appellees. Arguments of counsel having been heard, it was ordered that the cause be submitted to the court for consideration and decision, with leave to file briefs.

77 At a stated term of the Circuit Court of the United States for the district of California, held pursuant to adjournment at San Francisco on Monday the 24th day of August, 1868.

Present, Hon. Stephen J. Field, Judge.

Order decree be affirmed.

THE SAUCELITO WATER AND STEAM-TUG CO.
vs.
THE SHIP BLACKWALL.

This cause having been submitted to the court for consideration and decision, and due consideration having been had, it is now ordered that the decree of the District Court be affirmed with costs.

78 *Order directing affirmance of decree of Dist. Court.*

THE SAUCELITO WATER AND Steam-tug Company
vs.
THE SHIP BLACKWALL, appellant.

The decree of the District Court in this case is affirmed with costs.
August 24, 1868. FIELD, *J.*

Filed Aug. 24, 1868.

GEO. E. WHITNEY, *Clerk.*
By CHAS. W. GRANT, *Deputy.*

At a stated term of the Circuit Court of the United States of America for the District of California, held at the court room in the city and county of San Francisco, on the twenty-fourth (24) day of August, in the year of our Lord one thousand eight hundred and sixty-eight.

Present: Honorable Stephen J. Field, judge of said court, and associate justice of the Supreme Court of the United States.

79 *Decree.*

THE SHIP BLACKWALL AND James C. Creary, appellant,
vs.
THE SAUCELITO WATER AND Steam-tug Company, and George Clark, libellants and appellees.

This cause having been brought on for hearing on appeal from the District Court of the United States for the district of California, upon the transcript on file, no new proofs having been taken in this cause in this court, and the advocates having been heard for the respective parties on the transcript, and evidence taken in
80 the court below, and after due deliberation on the facts and arguments of the respective advocates, the court having ordered that the decree of the District Court be affirmed with costs.

Now at this day it is ordered, pronounced and decreed that the Saucelito Water and Steam-tug Company and George Clark, libellants and appellees herein, do have and recover of the claimants the sum of ten thousand dollars with interest at ten per cent. per annum, from the 22nd day of October, A. D. 1867, to this date, amounting to eight hundred and thirty-eight dollars and eighty-eight cents, in all ten thousand eight hundred and thirty eight dollars and eighty-eight

cents, and the costs taxed in the court below at five hundred and one dollars and a half, and also all costs to be taxed in this court.

And it is further ordered, pronounced and decreed that the libellants and appellees do have and recover interest on the said sum of ten thousand eight hundred and thirty-eight dollars and eighty-eight cents from this date till paid at seven per cent. per annum.

And it is further ordered, pronounced and decreed, that a
81 summary judgement be entered against H. B. Williams and H. P. Blanchard, sureties upon the bond filed for the release of said ship and cargo, for the sum of ten thousand eight hundred and thirty-eight dollars and eighty-eight cents and costs, taxed at five hundred and one dollars and a half, and that said Blanchard be not held responsible for the costs taxed in this court.

And it is further ordered, pronounced and decreed that libellants and appellees do have execution therefor.

FIELD, *J.*

Filed 2 Sept. 1868.

GEO. E. WHITNEY, *Clerk.*

At a stated term of the Circuit Court of the United States in and for the ninth circuit, District of California, held at the court room in the city and county of San Francisco, on the second day of September, A. D. 1868.

Present: Honorable Stephen J. Field, circuit judge.

82 *Order of appeal.*

THE SAUCELITO STEAM-TUG and Water Company *et al.*, respondents, *vs.* THE SHIP BLACKWALL, &C., appellant.	In admiralty.

This day came the appellant and claimant by W. H. Patterson, their proctor, and on their application it is ordered by the court that an appeal in behalf of said ship and her claimant from the final decision of this court on appeal rendered in this cause at the present term, to wit, on the second day of September, A. D. 1868, be, and the same is, hereby granted, and that a ceriified transcript of the pleadings, evidence, testimony, record and proceedings in the said cause be sent to the Supreme Court of the United States.

FIELD, *J.*

83 Filed 2 September, 1868.

GEO. E. WHITNEY, *Clerk.*

84 *Citation.*

UNITED STATES OF AMERICA, *ss*:

To the Saucelito Steam-tug and Water Company and George Clark, and to Tully R. Wise, esq., their proctor, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington, District of California, on the first Monday of December next, (1868) pursuant to an appeal (and an order of appeal) taken and filed in the clerk's office of the Circuit Court of the United States for the ninth circuit. District of California, on the second day of September, (1868) one thousand eight hundred and sixty-eight, in a certain cause of admiralty jurisdiction, wherein said The Saucelito Steam-tug and Water Company and George Clark were libellants and respondents, and the ship Blackwall, her cargo, &c., and James Creary, were claimants and appellants, to wit: case No. in admiralty, and which case was appealed to said Circuit Court from the District Court of the United States for the district of California, to show cause, if any there be, why the judgment and decree of said Circuit Court so appealed from, affirming the decree of said District
85 Court should not be corrected, and speedy justice should [should] not be done to the parties in that behalf.

Witness the Honorable Salmon P. Chase, Chief Justice of the United States.

STEPHEN J. FIELD,
Associate Justice of Supreme Court.

86 *Affidavit of service of citation.*

UNITED STATES OF AMERICA, *State of California,*
City and County of San Francisco, ss:

John O. Wheeler being sworn, says he is a white male citizen of the United States, of the age of 24 years and upwards, that on the 2d day of September, 1868, at the hour of 2 o'clock, p. m., at said city and county, he personally served a duplicate of the foregoing and hereunto annexed citation upon T. R. Wise, esq., proctor for libellants and respondents named in said citation; that said Wise was. at the time of such service, proctor for said The Saucelito Steam-tug and Water Company and said George Clark.

JOHN O. WHEELER.

Subscribed and sworn to before me, this 2d day of September, 1868.

H. F. LARDNER, *U. S. Com'r.*

Filed September 2, 1868.

GEO. E. WHITNEY, *Clerk,*
By H. F. LARDNER, *D. C.*

I, George E. Whitney, clerk of the Circuit Court of the United States for the district of California, do hereby certify that the foregoing eighty-six written pages, numbered from 1 to 86 respectively, constitute a full, true and correct copy and transcript of the records and proceedings of said court in the case of the ship "Blackwall," her tackle, &c., James Creary, claimant and appellant, against the Saucileto Water and Steam-tug Co., libellant and appellee, on appeal from the Circuit Court of the United States for the district of California, to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Circuit Court, at San Francisco, this 31st day of October, 1868.

[SEAL.] GEO. E. WHITNEY, *Clerk.*

Supreme Court of the United States.

No. DECEMBER TERM, 1869.

Ship Blackwall, Cargo and Claimant, Appellant,

vs.

The Saucelito Water and Steam Tug Company and George Clark, Appellees.

BRIEF OF THE CLAIMANT.

SHORT STATEMENT OF THE CASE.

The ship Blackwall, on Saturday, the 24th of August, 1867, in the Harbor of San Francisco, 700 or 800 yards from the wharf, was on fire, which, at about 4 o'clock in the morning, was discovered by one of the harbor police and by the chief engineer of the fire department of San Francisco. They directed those on board the steam tug Goliah, which was at the wharf to fire up. The engineer sent two of his assistants on board the Blackwall, who returned and reported that the ship could be saved. The engineer, with his assistants, engines and members of the fire department went on board the tug and were carried to the ship. The fire was extinguished by them substantially, in fifteen minutes, entirely within half an hour; the fire engines were supplied mainly with water from the ship. The sea was calm, the weather favorable. The tug merely transported the firemen and their engines from the wharf to the ship, and received little or no damage. *Record pp.* 17, 18. The master of the tug testified, *Record p.* 13, "The fire department took entire charge after we got alongside; they worked well, too." The tug had not the means or capacity to extinguish the fire, and rendered no

service, except the transportation of the firemen and their engines—neither the City of San Francisco or its firemen make claim for compensation.

The libel was filed by the master of the Goliah for the benefit of himself and the owners of the tug, as appears therein. In his testimony he disclaims all personal interest and says: "My name is used in the libel; it is for the use of the Saucelito Water Company; claim no interest." *Record p.* 12.

The libel avers that the supposed salvage service was performed by the tug, giving no credit to, or mention of the fire department. The proof is that this service was performed by the engineers, engines and members of the fire department of San Francisco; after the service had been performed, the consignees of the ship sent to the owners of the tug for their bill; the only reply was filing a libel on Monday, 26th, for salvage. *Record p.* 15. The claimants asked for a delivery of the ship and cargo which were surrendered upon the reception by the libellants of a bond in the sum of fifteen thousand dollars. *Record p.* 6. The ship, before the fire, was of the value of fifty thousand dollars, in greenbacks; the repairs cost some twenty-five thousand dollars in gold, leaving the value of the ship, as saved, at some twenty thousand dollars. *Testimony of Williams and Creary. Record p.* 15. The principal part of the cargo was sold for forty-five thousand dollars, gold; expenses on it, about seven thousand dollars. The whole expenses on ship and cargo, some forty or forty-five thousand dollars. *Record p.* 15.

The decree of the district judge is joint in favor of the owners of the tug and George Clark, without fixing the proportions, and against the ship and cargo, without saying how much shall be borne by each, and without stating their several values.

POSITIONS.

I. The libel is propounded and signed by George Clark, master of the Goliah, who, as he testifies, does not claim for himself. He allows his name to be used for the benefit of the owners, who did not personally perform any service, and who cannot be regarded as salvors, although, under some circumstances, they may receive compensation for the use and risk of their property. Clark cannot, having no interest,

maintain suit for others who may have an interest, in his name or jointly with those in whom the interest may be.

The ship Charles, 1 New. Ad. Rep. 329, "where some of the salvors decline asserting a claim for salvage compensation, their proportion will not accrue to the benefit of either their co-salvors or to the owners of the saving vessel." The decision in this case is fully sustained by the authorities.

A. The fire department does not claim for itself or its members. If the service of the department was performed in the execution of its public duty, no compensation, as salvage, can be made to it or for its use. In the case at bar, as shown in the record, the presumption is that the service was in the execution of its duty. There is nothing in the decree, or in the opinion of the district judge, to rebut this presumption.

Hobart v. *Drogan*, 10 *Pet.* 120–21.

B. The decree of the district judge, affirmed by the Circuit Court, is joint in favor of the master and owners of the tug, and cannot be sustained, unless both make claim and are entitled to recover. The master disclaims.

II. The service by which the fire was extinguished was performed by the fire department of San Francisco, in the discharge of its public official duties. The vessel was in a position to be under the surveillance of the harbor police, by one of which the fire was discovered. The engineer of the fire department seized upon the tug (no resistance or objection being made), and used the same for the transportation of his engines and men, with and by which the service and extinguishment of the fire was accomplished.

Testimony of Clark, Record p. 10–13.
Testimony of Chapman, Record p. 19.
Testimony of Whitney, Record p. 17.
Testimony of Gordon, Record p. 19.
Testimony of Wigmore, Record p. 19.
Testimony of Akerman, Record p. 20.

Conkling Admiralty Jurisdiction, 274, all persons who are under any legal obligation, express or implied, to render assistance, not entitled to salvage.

III. If the owners of the Goliah are entitled to compensation, they are so entitled, not as salvors but as owners of property, and for the use of the boat employed in a transportation service, taking into consideration, in connection therewith, any actual loss which the boat may have sustained, and the risk of injury attending the service, in the ascertainment of which the court will not indulge mere possible conjectures or speculations.

Island City, 1 *Black*. 129.

A. Where the owners of a vessel are entitled to participate in the compensation for a salvage service, the usual rule in admiralty is to give them one-third of the sum awarded for the entire service. This rule applies only to cases in which the vessel, its master and crew, are able to perform, and do in fact perform, the entire service; to cases in which the service may result, in delay or deviation, on the part of the salvor ship. The rule cannot be applied in this case, because the tug had no adequate means to perform the service of extinguishing the fire. The master and crew did not perform it. Nine-tenths, at least, of the entire service was performed by men and means not belonging to the steam-tug or its owners.

Waterbury v. *Myrick*, 1 *Blatchford & Howland*, 34. The owner of a vessel which is employed in a salvage service, may recover compensation for such employment out of the salved property, either as a co-salvor, by uniting with the officers and crew of the salving vessel in the suit, or by bringing it himself in his own right, in case they refuse or neglect to join. The owner of a salving vessel is admitted to share in the salvage reward solely on the ground of the risk and damage to which his property is or may be subjected, and consequently he can come in as a co-salvor only when his vessel has been the direct means of rendering the service for which salvage is awarded. The owner is *indemnified* for the risk to which his property is exposed, by being, as it were, *novated* as a co-salvor. The owner's claim to participate in the salvage

reward rests always upon the risk and damage to which his property is or may be exposed, and on no other ground. Strictly speaking, salvage is the reward of those who engage in the salvage service, and is participated in only by those who actually effect the same. The owner of the vessel is admitted to participate in the reward by courts of admiralty, upon equitable considerations, both that the vessel is usually an efficient instrument in the service, and because of the risk to which his property may be thus subjected. But the principle upon which others than actual salvors are permitted to share in the salvage reward stops here.

The ship Charles, cited supra. "The owners of the saving vessel are entitled to be paid a proportion of the amount awarded by the court, as salvage compensation; and one-third is usually awarded to such owners because of the risk and danger to which their property is exposed in the performance of the salvage service. The court will not indulge mere possible conjectures.

Union Tow Boat Company v. *the Bark Delphos*, 1 *New. Ad. Rep.* 412. "Salvage is not always a mere compensation for work and labor. The ingredients of the service are: 1. Enterprize in the salvors in going out in tempestuous weather. 2. The degree of danger from which relief is sought. 3. The value of the property saved. The libel goes only for the owner of the boat. To regard this corporation owner as salvor, and award it compensation as such, would be contrary to well established principles of admiralty law. It is entitled to a liberal reward for the employment and risk of its property. This must be fixed in accordance with the usual mode of distributing the whole amount of salvage compensation. The right of the captain and crew cannot accrue to the owners.

Maude & Pollock on Shipping, 329. The claim of the owners of salving vessels, who do not personally assist in the service, to share in the salvage, is usually considered as very slight. It is otherwise, however, if their property is exposed to considerable danger, or diverted from a lucrative employment, or if they incur a real loss or inconvenience. So those who furnish boats or other articles for salvage service, but do not assist in person, are not usually entitled to be paid salvage, but only a fair remuneration for the use of the articles which they have supplied. Where several independent parties co-operate in assisting a

vessel, the court awards salvage according to the merit of the respective claims.

Mason v. *ship Blaireau*, 2 *Cranch*, 240. One-third of the salvage award was allowed to the owners of the salvor ship.

Apply these principles to the case at bar, deduct from a reasonable salvage compensation the value and proportion of the service which was performed by the fire department, and allow to the owners of the tug the full one-third, which is ordinarily given to the owner of the salvor ship, and it is apparent that the decree passed in the court below cannot be sustained. The owners of the tug would be entitled to little more, if any, than their ordinary charge for towage service, for which business the boat was usually employed. These charges are stated, *Record p.* 12, close of the page.

IV. It is evident from the facts shown in the record, and from the opinion of the district judge, that the sum fixed as compensation for salvage includes the entire service, which was rendered by the fire department, so well as the transportation service of the tug. If this is not the fair import, ten thousand dollars (ten per cent. upon the supposed value of the ship and cargo) is manifestly an erroneous and excessive allowance to the owners of the tug, for the service which it performed.

V. The decree does not state the value of the ship or of its cargo, and does not fix the sum or salvage charge which shall be borne by the one or the other.

VI. The sum named in the bond (fifteen thousand dollars), upon which the ship and cargo were restored to the claimant by agreement of the parties with the approbation of the court, by its acceptance, must be regarded as the value of the property saved. Two-thirds of this value as salvage is excessive.

The Betsey, C. Robinson Rep. 295. Bail for cargo taken by claimant not reduced to the amount of the actual proceeds. The goods were delivered to the claimant at his own request and at an agreed value, by which the amount of the interest in dispute was completely concluded. If the value had proved much greater than the appraised sum, the captor would have derived no benefit from the increase. The speculation in that event would have been advantageous to the claimant only; he would have brought in only the appraised value. The adventure being unfavorable, the same valuation must be adhered to as equally binding against him. I have no hesitation in rejecting the application for a reduction of the valuation. In a case cited, *in notis*, the same doctrine was applied to cases of salvage.

A. If the valuation of ship and cargo, as shown by the bond upon which they were delivered to the claimant, may be disregarded, then, as appears from the testimony, they were, after the fire, of the value of some fifty or sixty thousand dollars, and not, as supposed by the district judge, one hundred thousand. *Testimony of Williams and Creary. Record p.* 15. Taking this valuation, the allowance to the owners of the tug must be regarded as clearly excessive.

B. The tug did not receive any serious damage; was not in great peril. Left the wharf at a quarter before six in the morning, which was after sunrise; reached the ship in a few minutes, with a calm sea and good weather, — a different condition of things altogether from that which was shown in the case of "*The Traveller*, 3 *Hayward*, 371."

The libel avers that the ship was on fire, and was in great danger of being totally destroyed, and would have been destroyed but for the exertions of said steam tug, her captain and crew; that the said George Clark went with said steam tug Goliah to her assistance, and succeeded, after great trouble and at great risk to the said tug, in quelling and subduing the flames, and then towed the ship to a place of safety.

This is not an accurate statement of the case, as shown by the testimony before the court. At the hearing two supposed grounds of danger to the tug were relied upon. *First*, That the tug was once or twice on fire. *Second*, There was apprehension that one of the masts of the ship might fall upon the tug. The district judge has added (see opinion, Record p. 25,) that the tug encountered the risk of the possible existence of explosive substances on board the vessel.

EVIDENCE AS TO FIRE ON BOARD THE TUG.

Clark, the master, *Record p.* 11, at the close, says: "There would have been danger of getting afire if we had not had the engines and our donkey to put it out." He repeats (p. 13): "We had a donkey engine and buckets to put out fires."

McKee, *Record p.* 13. "Our wheel-house took fire; we were alongside of ship's bulwarks; we turned hose on and extinguished it; she was on fire on two occasions." On cross-examination he says: "the fire did not burn through the wheel-house."

Richardson, *Record p.* 13. "Saw the Goliah on fire on the starboard paddle-box and forward on the guard. We put it out with buckets."

Chapman, engineer, *Record p.* 15. "Did not see any danger to the tug."

O'Riley, *Record pp.* 16, 17. "The tug caught on fire. We turned the pipe on it; put it out; afterwards saw them at work with pails."

Whitney, chief engineer, *Record p.* 17. "There was no danger of the Goliah taking fire. I don't think she took fire. We could have extinguished instantly any fire that took."

Second, danger of mast falling from the ship upon the tug, bursting its boiler and killing the crew.

Whitney, *Record p.* 18, *cross-examination*. "I became satisfied, three minutes after I went over the side (of the ship) that there was no danger from the mast."

So far as any other witness speaks in relation to the falling of the mast, it amounts only to a mere suspicion or guess, not based upon any facts to sustain it.

The testimony of the chief engineer of the fire department, *Record p.* 17 *and* 18, most clearly shows that the service was without danger and easily performed.

The tug, as shown by the testimony of its master, was engaged some six hours. Its ordinary towage service was $25 to $30 per hour. In this view, and upon a liberal consideration of the case, as shown in the testimony, an award of ten thousand dollars to the owners of the tug is excessive.

Clark, libellant, recalled as a witness, Record p. 20, says: "After we had got the engines off the tug, Mr. Whitney called me and said: 'You must tell Capt. Card I must come on with him. We have got a good thing. It is a salvage, sure.'" This explains why no answer was given to the consignees of the ship when they called upon the owners of the tug for their bill, except a libel, within twenty-four hours after the service, excluding Sunday.

C. B. GOODRICH, *for Claimant.*

Ship Blackwall

v

Lancelot & Tug &c

Brief of Appellant

Ship Blackwall vs. The S. W. & S. Tug Co. and al.

ADDITIONAL BRIEF OF THE APPELLANTS.

ORIGINAL BRIEF. POSITION I.

Fulham v. *McCarthy*, 1 *H. of Lords Cases*, 719. "A party having no interest in the question cannot join with one who has, and there is a misjoinder, which certainly will cause a dismissal of the bill at the hearing; and which, whether taken advantage of at an earlier stage or not, may be taken advantage of at that time."

A libel, in the Admirality, it is submitted, should be governed by the same principle.

III. ADDITIONAL CASES.

The Vine, 2 *Hag.* 1–2. It is, I apprehend, a general rule that a party not actually occupied in effecting a salvage service, is not entitled to share in a salvage remuneration. The exception to this rule that not unfrequently occurs is in favor of owners of vessels, which, in rendering assistance, have either been diverted from their proper employment or have experienced a special mischief, occasioning to the owners some inconvenience and loss, for which an equitable compensation may reasonably be claimed.

The Charlotte, 3 *W. Rob.* 72. The same doctrine.

The libellants were incorporated for the purpose of owning and using boats for a towage service; they do not come within the terms or reasons of the exception from the general rule stated in the cases cited. Most clearly the sum of ten thousand dollars exceeds an equitable and reasonable compensation for the service performed by the steam tug.

POSITION VI.

The Mellona, 3 *W. Rob.* 22. "An appraisement under a commission, being a proceeding of the Court, the appraised value, unless objected to, binds both parties; if an agreement as to the value, both parties are bound by their own act and consent."

VII. ADDITIONAL POSITION.

The owners of the steam tug in their libel, aver that the boat, its master and crew performed the entire salvage service. They must prove this, or the libel, not having been amended or reformed, it is respectfully submitted should be dismissed. As they do not aver themselves to have been co-salvors, they cannot recover as such. The issue presented by the pleading is an entirety of service rendered by the libellants, when in fact only a slight proportion thereof was rendered by the steam tug; the value of which is not distinctly in issue, and there is nothing before the Court by which it can be apportioned.

Malcomson v. *Clayton*, 13 *Moore, P. C.*, 198, 206.

Zugasti v. *Lamer*, 12 *Moore, P. C.*, 331, 348. These cases show that the rule requiring the allegation and proof to correspond is rigidly adhered to in the Admiralty. They were cases of collision, but the principle is equally applicable to cases of salvage.

12 Moo PC 334 338

Orne v. *Townsend*, 4 *Mason*, 541.

The Sarah Ann, 2 *Sumner*, 206.

The Towan, 2 *W. Rob.* 259. "A claim of salvors, setting up an inflamed and exaggerated statement of alleged salvage service, dismissed, and the salvors condemned in the costs."

The Neptune, 1 *W. Rob.* 302. The Court clearly intimate that separate suits should not be brought where different sets of salvors are concerned in the same service.

The Princess Alice, 3 *W. Rob.* 142. "The Plaintiffs are bound to establish to the satisfaction of the Court the case which they set up. and if the matter be left in doubt, it is impossible for the Court to say salvage service has been performed, and salvage remuneration due."

Upon the issue thus presented by the libellants, if the proof fails to show an entirety of service, the Court has no means of ascertaining how much was performed by the libellants, and how much by the engines and members of the fire department. The District Court did not undertake to ascertain the proportion, but decreed for the supposed value of the entire service.

Clark, master of the tug, in his testimony, *record*, p. 13, says, "The fire department took entire charge after we got along side; they worked well too." *Upon page* 12 he says, "It was impossible to save the ship unless we had gone there with engines."

C. B. GOODRICH,

for Appellants.

Ship Mackinnell

v

The S. W & S. Taylor & Ld

Arbitrator and brief of

appellants —

Supreme Court of the United States.

No. 174. —— TERM, 1870.

Ship Blackwall, Tackle, Cargo and Claimant, Appellant,

vs.

Saucelito Water and Steam Tug Company and George Clark, Appellees.

ADDITIONAL BRIEF OF THE APPELLEES.

The Ship Blackwall, her tackle, cargo, &c., James Creary, claimant, appellant,

vs.

The Saucelito Water and Steam Tug Company and George Clark, appellees.

POINT I.

In answer to position 1 of appellants:

The case of the ship Charles, 1 Newb. Ad. Rep. 329, is not a case in point. That case refers to cases where some of the salvors *decline*

for many cases have been decided allowing pilots salvage, where they had exceeded their legal obligations, and by parity of reasoning we believe the claim of Fire Department might be sustained, as in going

Thos Blackwell

v

The S. W. & S. Taylor Ltd

Addition and brief of

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vs.

The Saucelito Water and Steam Tug Company and George Clark, appellees.

POINT I.

In answer to position 1 of appellants:

The case of the ship Charles, 1 Newb. Ad. Rep. 329, is not a case in point. That case refers to cases where some of the salvors *decline asserting a claim for salvage compensation*. In such a case it is indeed true that their proportion will not accrue to the benefit of co-salvors or to the owner of the salving vessel. Clark does not *decline asserting his claim*. Even the awkward and unsuspecting reply given by him to an ingenious question of opposing counsel—to wit: "My name is used in the libel, it is for the use of the Saucelito Water Co., owning no interest." Rec. p. 28 shows that he *is asserting a claim*.

as against the Blackwall. True, he says that he will not *claim an interest* in the salvage as against his employers. But he, nevertheless, asserts a claim to him as salvor, both in the libel and in his testimony, as against the Blackwall. He asserts that he is entitled, as against Blackwall, to reward as salvor, and the question heretofore and still presented, is whether he is or not. If he was, judgment must have been for libellants. It is, indeed, strange that counsel deny the fact that he is asserting a claim, as against their ship, when he appears on the record and states in the libel that he does assert it; and judgment has been twice rendered in his favor. As to the interest he will claim, in claim asserted and allowed, the opposing counsel and court have nothing to do with it. His expression that he *claimed no interest* arose from private obligations moving between him and his employers. As their servant, he may or may not claim, at their hands, his proportion of the salvage earned by him with their property, but he, nevertheless, asserts that, by reason of his salving service *the Blackwall* is indebted to *him*. We recall our distinction between "*claiming an interest in* the salvage" and "*asserting a claim to* the salvage." A, plaintiff, may not *claim an interest* in a suit vs. B, defendant, but at the same time *assert a claim* due to him as against B, defendant. If it is established as vs. B, the court cannot deny A's right by reason of any disposition he has made or proposes to make, of that interest.

The Blackwall is undoubtedly indebted to George Clark, master, for salvage. He asserts the debt, but disclaims an interest in it, as it is, as it were, assigned to the Company. He claims a recovery on his own account as against Blackwall. This, therefore, is not the case contemplated in The Charles, which referred to case where some salvors do not appear or decline to assert a claim. Clark appears to assert as against Blackwall. That fact is patent on face of libel and in both decrees where judgment was for Co. & *Clark*, and even if he asserted his rights imperfectly or awkwardly, the irregularity was cured by decree, which was joint in favor of Co. & *Clark*, master. See Br. Dig. p. 652. XIX § 335. Rec. pp. 63-80.

So also as to A, under position I, in appellant's brief:

It is there stated—"The Fire Department does not claim for itself or its members." We agree that it does not and should not. We have our doubts, however, as to whether it is not in strictness entitled; for many cases have been decided allowing pilots salvage, where they had exceeded their legal obligations, and by parity of reasoning we believe the claim of Fire Department might be sustained, as in going

out on tug it exceeded its bounden duty. But we agree with opposing counsel, as they seem to wish it, that Fire Department was not entitled. However, notwithstanding that fact—supported by authority cited 10 Pet. 120-121—the judge, in the district court, discounted their proportion from whole amount of assistance rendered, in abatement of salvage, when he decreed for libellants.

As to B, under position I of apellants:

Our answer to position I generally, answers B, to wit: The libel and decrees all show the fact that Clark did assert his claim as against the Blackwall, and only disclaimed as between him and Saucelito Water Company.

Point II.

The evidence shows no such state of facts as laid in position II of appellants.

1. The service by which the fire was extinguished was not performed by the Fire Department of San Francisco, alone.

On p. 27, the statement of Clark, relied on in additional brief of counsel for appellants, Clark, master, testifies: "It was impossible to save the ship unless the Goliah had gone there and taken the engines."

Suppose the engines had gone there without the Goliah? Ha! The Goliah would now be suing for salvage of *the engines*, probably.

2. The Engineer of the fire department did not seize the "Goliah." What right had he to do so? Suppose she had resisted, and the "30 minutes" been lost in forcing her. Would she have been legally liable? She was not forced, she was not legally bound. If she could have been forced, she was not. Her service was voluntary and cheerfully rendered. She was prepared at that and all other times, to render just such service as a volunteer. Paper and fuel were prepared in her engines over-night, for just such an emergency. Was she under any legal obligation, express or implied, to render assistance to the "Blackwall?" Was the fire department itself, under any legal obligation to render assistance, even in the corporate limits, on the water, afloat, and without means of flotation, and without power to compel the assistance of those who had the means of floating the fire engines? If they had such means or such power, it has not been proven by counsel for appellants.

See as to legal obligation of the "Goliah:"

The Wave vs. Hyer and als., 2 Paine, 131, (before cited,) and case cited by counsel for appellants, Conk. Ad. Juris. 224.

Point III.

In answer to position III of appellants:

On the grounds heretofore taken by us in point I, position III, of appellants' brief, immaterial; record shows that claim for salvage was entered by Saucelito W. & S. T. Co., *and George Clark, master.* The Company asserts its claim as owners. George Clark, asserts his as master and salvor, (whether his claim, which he asserts as salvor, is to enure eventually to his benefit, or not, is immaterial; the fact is, it is asserted in libel, and decrees support it, they being joint for Company and Clark.) Judgment was joint for Company and Clark, for ten thousand ($10,000) dollars. This, upon whole merits, to all parties to libel. The learned counsel need not exercise themselves as to the proportion due respectively to Company as owners, and Clark as master. Decree is sufficiently certain to be good, as against them. The counsel for appellees will settle up the respective proportions of Company and Clark satisfactorily to them, or can still have the proportions ascertained by court, by the light of the authorities recited in connection with point III, of appellants' brief; but they are not applicable to the point now in controversy.

Point IV.

We deny position IV, of appellants' brief, to wit:

"That the sum fixed as compensation for salvage, includes the entire service which was rendered by the fire department, as well as transportation service of the tug."

It is expressly stated in the opinion of the District Judge, after reciting various circumstances meritorious, and tending to a liberal allowance of salvage in favor of libellants: "*on the other hand* it is to be remembered that the tug was not the sole salvor; without her assistance the fire engines would have been powerless to save the ship; but without them the tug's aid would have been ineffectual." Record, p. 61. If the services of the fire department were not deducted, why does the learned Judge say, "on the other hand?" The allowance is not excessive, but very small.

See cases cited in original brief, as to proportion allowed.

This is a case of "Derelict,"—*vide* original brief. Rewards for derelicts are from one-half to one-third. Owners of derelicts are usually glad to get one-half of their salved property.

"The amount rests in the sound discretion of the court. Generally

it ought not to be less than one-third." See Tyson and als. vs. Prior, 1 Gallison, 133. Here we find owners appealing twice, from a decree of one-tenth of salved property. If the court below erred, it was in their favor. The case was desperate, or looked so. See Record, p. 44, Gordon's testimony.

Point V.

As to position V. of appellants' brief:

It is bad. It is no error, not even an informality, that value of ship and cargo respectively, and proportion of salvage charge to be borne by each, were not specified in the decree. We cannot be prejudiced by the court's omission. We had the delivery bond to secure us, and care not which the amount came from—whether ship or cargo. Besides, it is a rule that a per cent. charged upon a bulk or entirety, owned by several, without regard to the owners thereof, shall be borne by the owners of the parts, proportionably. Thus, the District Judge, in this case, declares $10,000 to be ten per cent. of whole value of ship and cargo. Page 62, Record. The cargo is stated to have sold for $45,000, or nine-twentieths of whole, and must, as a matter of course, bear that proportion of charge on the whole. However, if appellants desire that the Judge shall apportion the charge between ship and cargo, he may do so now,—"*nunc pro tunc*"—and it may also be inserted in the decree of Circuit Court.

"A judgment or decree may be entered '*nunc pro tunc*,' when the delay has arisen from the act of court; but not for the purpose of giving it a different effect from that originally intended, Br. Dig. "jugdment," p. 492, §5, and case of Gray vs. Brignardello there cited. 1 Wallace, 627. In the case of Earl Grey, 3 Hag. 364, this was done on application of owners of ship and cargo, after decree rendered.

Point VI.

Position VI, of appellants, is not relied on by them.

They pretend to have confounded in their minds, "an agreed value," case cited by them, C .Rob. 295. The Betsy, or, "an appraisement under a commission, being a proceeding of the court," cited by them. 3 Wm. Rob. 22. The Mellona—with the case of a bond like the one given in this case, conditioned to abide by the decree. In case in C. Rob. 295, the Betsy, "an agreed value," was arrived at by parties, and the court rightly compelled both parties to abide by it. In

3 Wm. Rob. 22 the Mellona, "an appraisement under a commission, being a proceeding of court," unless objected to, was held to bind both parties. Both cases propounded good law and wise law. But how different are they both, from the case where a bond is given, like that on p. 16 of Record?

Is any value agreed upon for ship and cargo in that bond, or implied from its terms? Is there any appraisement under a commission recited or to be inferred from its terms? Can any value of ship and cargo, or either, be in any way ascertained from it?

Let us see how and why it was given:

We libelled the Blackwall and cargo. Why? For the *proportion* of ship and cargo due us for salvage services; not for the whole, but for our per cent. as salvors. *The whole* was released upon the execution by claimants, of what? Not of a bond *for the whole*. Not of a bond conditioned to have the whole vessel and cargo forthcoming. But upon the execution by them and their sureties of a bond in a sum which we accepted (see Rec. p. 17) as sufficient to cover our claim of a per cent., conditioned to abide by the decree of the court touching our claim to that per cent. See condition of bond, p. 1, 16-17 Record, Ab. Nat. Dig. 229, § 64.

In B, position VI, appellants discuss only facts: "The court below will be presumed to have judged the facts correctly, unless some glaring inconsistency appear." 1 Sum. 214, Emulous, before cited and other cases cited in original brief.

Point VII.

The position VII of appellants is neither correctly stated, nor good:

The libellants nowhere allege an entirety of salvage service, although they alone, on appellants' own state of facts, are entitled. If the Fire Department had wished to intervene for its interest, it might have done so in this suit. Appellants say it had no claim to salvage. If not, why join in this libel? If it had, were we compelled to wait for it to join us, and are we to be defeated in our suit because it did not? Perhaps it only did its duty, as appellants allege. Then it had no salvage claim. The Tug certainly did more than its duty. No issue of entirety of service on part of libellants has been joined. Cases cited by appellants are not in point.

Point VIII.

It was indeed impossible to save the ship, unless the Goliah had

gone there and taken the engines. Vide appellants' additional brief, last line, and Record, p. 27.

POINT IX.

The appellees respectfully solicit this court to affirm the decree.

NEW AUTHORITIES CITED.—To be added to original Brief.

As to ingredients of salvage—they are:

1. Enterprise in salvors, &c., risking own lives to save those of others and others' property. 2. The degree of danger and distress from which the property is rescued; whether it were imminent peril *and almost certainly lost*, if not *at time* rescued and preserved. 3. Degree of labor and skill which salvors incur and display, and time occupied. 4. Value. 3 Hag. 121, The Clifton.

As to distinction between towage and salvage:

See 3 Wm. Rob. 140, The Princess Alice; 1 Wm. Rob, 177, The Reward.

As to proportion for salvage:

See 2 Wm. Rob. 294, The Graces; 3 Hag. 346, note 2 to Meg. Merriles; 3 Hag. 401, note 1 The United Kingdom; 3 Hag. 364, Earl Grey; 3 Hag. 428, The Isabella; 3 Hag. 203, Industry; 3 Hag. 339, Sussex; 8 Cranch, 221, Adventure; Gilpin's Rep. 60-67, Hand & als. vs. Elvira.

Also on subject of salvage:

See 19 How. Prac. Rep., The Johnson and cases there cited; 24 How. Prac. Rep. 128, The Eldorado.

Respectfully submitted.

H. A. & J. S. WISE,
for Appellees.

CASES CITED IN ADDITIONAL BRIEF.

1 Newb. Ady. Rep. 329, The Charles.
Br. Dig. p. 652, XIX § 335.
10 Pet. 120-21.
2 Paine, 131, The Wave vs Hyer & als.
Conk. Ady. Juris. 274.
1 Gallison, 133, Tyson & als. vs. Prior.
Br. Dig. "Judgment," p. 492, § 5.
1 Wal. 627, Gray vs. Brignardello.
3. Hag. 364, Earl Grey.
1 C. Rob. 295, The Betsy.
3 Wm. Rob. 22, The Mellona.
Ab. Nat. Dig. 229, § 64.
1 Sum. 214, The Emulous.

Supreme Court of the United States.

No. 174. —— TERM, 1870.

Ship Blackwall, Tackle, Cargo and Claimant, Appellant,

vs.

Saucelito Water and Steam Tug Company and George Clark, Appellees.

BRIEF OF THE APPELLEE.

The Ship Blackwall, her tackle, cargo, &c., James Creasy, claimant, appellant,

vs.

The Saucelito Water and Steam Tug Company and George Clark.

POINTS AND AUTHORITIES CITED IN BEHALF OF APPELLEES.

1st. But for the assistance of the tug the ship would have been destroyed. See Captain Clark's testimony, also Sellinger's, also the damage done, as evidenced by repairs, &c.

2nd. But for the "Goliah" she would have been a total loss. The "Goliah" had the capacity to carry the engines. But it is controverted whether the "Rescue" could. The "Rescue" is the only tug at all capable, if any is. But the "Rescue" was not there and could not be got ready. A half hour more would have been too late. It is sufficient for our purpose to say, that, but for assistance, the vessel would have been destroyed, and we rendered that assistance.

3d. The Blackwall was derelict at the time the service was rendered and we saved her, to wit: Sellinger testified that he was the last man on board, and was driven off by the fire. Record, p. 50.

Others testify as to same point, and none deny it. It is not even disputed. Besides, it is stated in the answer that she was set on fire. Her crew and the Saranacs had failed to put her out: The cases show that when the safety of a crew compel them to leave a ship, she is a derelict when they do leave. Some writers speak of leaving without the "animus revertendi." In this case such animus can be safely inferred from the action of the crew. See Webster. Where a vessel is found abandoned, she is a derelict, whether the desertion was from accident or necessity, or voluntary dereliction." See Abbott Nat. Dig. vol. 2, p. 148, "Derelict," and therein Evans vs. The Charles, 1 Newb. 329, Montgomery vs. T. P. Leathers, Id. 421-425.

The length of time makes no difference. The length of time and distance make it sure that an abandonment has taken place; if it be but for one instant, it is sufficient to make good the claim for salvage.

The saving of the Blackwall was attended with some *real* danger and much *apparent* danger, and much *apprehended* danger. Captain Clark says, p. 26 record, that "there was great danger" to the tug. Axes were ready to cut away the rigging. McKee's testimony corroborates Clark's, p. 30 record. This danger was from falling spars. All thought the mast might fall. The *apparent* danger was great and was added to the real. The danger of burning the tug was both real and apparent. The "Goliah" was on fire. See McKee's testimony p. 30 record. This danger was, perhaps, slight, unless her engines got foul or broke, in which case it would have been terribly real. And the dirty salt water which she was using made it probable that her hose might become foul. The danger from burning, therefore, was not merely nominal, though not very serious as it turned out. Still it was such a danger as to constitute one of the circumstances cited in the books as deserving the most consideration in considering a claim to salvage. And such a danger as to require merit and gallantry to face it. The Emulous, 1 Sum. 207, a case cited by opposing counsel. It was argued that the danger was increased by us because we lashed ourselves to the side of the "Blackwall," but this was necessary in order to render efficient service, for otherwise we could not keep our place by her side, owing to the great strength of the tide.

But why criticise the act, if it was so perfectly harmless? For our learned opponents have throughout contended as well that there was no danger, as that it was useless. If there was no danger in lashing by the side of the ship, surely we did right to do so. If there was danger, we contend that we were compelled to incur it and could have rendered very little aid if we had not made ourselves fast to her, and by doing so showed such a degree of gallantry as the books have cited, as an essential element in awarding salvage, in the very case cited by our opponents, The Emulous, 1 Sum. 207. There was another description of danger which we encountered in their behalf, to wit: the apprehended danger, from gun-powder or nitro-glycerine, which might have easily been on board. The substances are freely transported. Counsel says that the reports of the papers showed otherwise.

Do men state facts in shipping goods? It is notorious that they do not. Look at the explosion at Wells, Fargo & Co.'s, and others which have lately occurred. But are shippers and boatmen to delay boarding a burning ship until they have copies of the shipping lists distributed among them, or send for files of papers to see if explosives are on them?

Real danger, apparent danger, and apprehended danger are all compensated for in Admiralty. A Salvor takes all risks and is his own insurer, and is justly so, even under the most liberal system. It is a well known fact that large ships carry out one or two guns, and need even a little powder, and this little would destroy a tug like the "Goliah." Every one admits that the tug performed her duty well. So swore Whitney, the leading friend of our opponents. The facts show, that both ship and cargo were saved. That we saved both. That we did the service well, with skill and gallantry. This is a salvage service of great merit, as acknowledged by all courts. Counsel contend that the fire department is entitled to as much as we are. The fire department was necessary and so was a transport. The fire department is a public institution. Had we gone out to the burning ship, slipped her cable, carried her to shore where the fire engines could play upon her from the land and extinguish the flames, to wit: carried her from a place of danger to one of safety; who would have been Salvor then? If, instead of taking ship to engine, we took engine to ship; who then is Salvor. Clearly the difference is nothing. It is precisely the same, as if by magic we had driven piers and built a wharf from the land to the ship, so that the engines might reach her, or brought the ship up to the wharf. But the learned Judge in the District Court, fell into the error of taking into consideration and account the service of the fire department, and but for that, would have given us at least twenty-five thousand ($25,000) dollars, i. e., if we had put the fire out by ourselves.

Counsel have intimated that because the fire department, as they urge, informed us that the ship was on fire, we have a less meritorious claim. But who ever heard that obtaining information detracted from service? Suppose a harbor-light had signaled a vessel in distress, and we had called by for light-house boats on seeing the signal, and gone out to the ship and salved her; would we have lost our claim to salvage because of our being warned of her distress?

The same of this case.

Capt. Clark did not go to bed before the tug was ready for emergencies; and such is provided for in salvage service. The ship was anchored in sixty (60) feet water. She would have burnt to the water's edge and sunk; in thirty (30) minutes more she could not have been saved. When they got to the ship she was deserted; the "Goliah" was lashed to her side, and she was saved. She was towed to the flats because it was too dangerous to tow her to the wharf.

It has been argued by counsel, that the "Goliah" was only entitled to compensation. That is true, but the compensation to which we

are entitled, is Admiralty compensation, and not pay for the mere labor performed.

Merit, gallantry, danger incurred or braved, whether it actually existed or was reasonably apprehended, when the service was rendered, and the value of the goods saved, are the tests of compensation. The amount saved, always increases the compensation without any more labor or danger. But it must be remembered, that the fact of compensation always depends upon the fact of success. We are not paid a price stipulated in advance, whether we succeed or not; we are working at our own risk in this as well as all other particulars.

An appeal was made to treat leniently the foreign ship that suffers misfortune in our port. Such appeals might well be omitted, when a case is brought before the court alone. Where is the authority which draws a distinction in favor of a foreign vessel, on a question of salvage? But here an appeal of the sort is wholly uncalled for, as no allusion has been or will be made to the fact, that the "Blackwall" was a foreign vessel. That fact comes before the court for the first time in counsel's brief. Its purport is to deny a Salvor justice from a foreign vessel, and thus put her at a disadvantage as to help, when in distress. All we ask is such justice as is administered by courts of *Admiralty;* if the learned counsel had wished for justice to a British ship, they would have consulted English decisions for their British justice. But the authorities heretore cited, have been American, without exception. We desire to give this British vessel the same British justice, that would be given our own shipping by the laws of her Britanic Majesty. Pursuing this intent, we for the most part discard our American decisions, and offer in our support English decisions. And it may be added, that on maratime questions, England brings as much, nay, more experience and learning than any other country. The benefit of very liberal allowances for salvage, is a matter of experience and policy with them.

LEGAL PRINCIPLES.

Are we Salvors?

A Salvor is one who, without any particular relation to a vessel in distress, proffers useful service and gives it as a volunteer adventurer, without any pre-existing covenant that connected them with the duty of employing himself for the preservation of the vessel. The Wave vs. Hyer and others, (2 Paine, 131.) Had we any particular relation to the vessel in distress?

Did we proffer useful service?

Did we proffer it as a volunteer adventurer?

Who could have compelled us to go, if we had refused?

Were we compelled, or did we go voluntarily?

Was there any pre-existing covenant that connected us with the duty of employing ourselves for the preservation of the vessel?

If Salvors, what is salvage?

"Salvage is an allowance for saving a ship, or goods, or both, from

danger, fire, pirates, or enemies," (2 Paine, 466,) Lea vs. ship Alexander and cargo. * * * * * * * * * *

And to entitle to salvage, there need not have been risk of life, expenditure of money, or the application of any extraordinary means, but may be exclusively a case of skill. Ibid. Lea vs. ship Alexander and cargo.

Was there ever a more skillful feat than that of taking land-fire engines out to a burning vessel, a novel and efficient feat, which not only bestowed forethought and skill, but involved risk of property and life, the expenditure of money in repair, and was assuredly a resort to extraordinary means of succor.

As to proportion for Derelicts, it is from one-third to one-half, Rowe and others vs. Brig ——, 1 Mason, Rep. 377, Hindry vs. Priscilla, Bees, Rep. 1, L'Esperance, 1 Dod. 46.

In the case of the Balto, 2 Dod, 136, £800, out of £1900, was awarded. This would give us upwards of $40,000. In the case of Aid, a tenth was allowed to boats, 1 Hag. 84. In 3 Hag. 255, the Albion nearly a fourth, and costs was allowed. And other sums to other vessels. A fifth was allowed Branken Moor, 3 Hag. 373. In this case, the court said the underwriters would not have underwritten the ship for 50 per cent. See also the Medora, 2 W. Rob. 69, which was a case of mere towage, where £600 was allowed. The Isabella, 3 Hag. 427. In the case of a derelict where a claimant appears, generally from a third to a half is allowed. The modern cases give about a third. The Thetis, 2 Knap, 410. But in the case of Jonge Bostoon, 5 C. Rob. 322, two-thirds were allowed. See also the Isabella, 3 Hag. 43, which is a strong case. See also the Thetis, 3 Hag. 242, 2 Knapp, 408, where expenses, £29,000 out of £157, 000 were allowed. These cases make allowances far in excess of the allowance in this case, and that too, where the destruction of the property was not so certain.

Carrying out the principle of encouraging enterprise as much as possible to save property, which is a great public benefit, the English government encourage steamers.

The Raikes, 1 Hag. 246. The London merchant, 3 Hag. 401.

And they say that steam vessels usually belonging to great and opulent companies and are fitted out at great cost, and they allow a larger reward to them. The Perth, 3 Hag. 416. The Sussex, 3 Hag. 339.

It is a ruling principle to give a large reward when the property is large, vice versa, 3 Hagg. 321, The Wm. Beckford, 3 C. Rob. 355. The Clifton, 3 Hag. 120, The Raikes, 1 Hag. 246.

If these ingredients as stated above are the essentials of salvage, are they not embraced in our claims for salvage and are we not entitled to a good reward?

In considering salvage cases, the primary object is the danger of the property saved, its value, and the assistance actually rendered; the secondary object is the risk to salvors and their property, the skill, time employed and other collateral circumstances. Vide The

Traveller, 3 Hag. 371, The London Merchant, Ibid 394. Promptitude in rendering assistance is a principal ingredient. The City of Edinburg, 2 Hag. 334, The Spheroid, 2 Monthly Mag. 285. These cases would give much more than is allowed.

In salvage cases the exact reward is not the proper test, a considerable reward should be allowed. The Sarah 1 C. Rob. 313. The proportion given depends on value. The Blenden-Hall, 1 Dodson 423, The Waterloo, 2 Dodson 442, The Raikes, 1 Hagg. 246.

We have searched for salvage cases where ships were saved from fire, but have found but one. It is very strong for us, however, 1 Newb. 412, The Delphos. The reason, perhaps, is, that ships are usually at wharves when destroyed, in which cases they are not salvage cases, or when at sea they are usually totally destroyed when they would be salvage cases if saved.

As to amount of salvage:

The amount of salvage rests in the sound discretion of the Court. * * * * * * The appellate court will not incline to reverse the decree of the court below on a question of salvage, where the discretion has been fairly exercised and no undue inflammation of the rate of salvage is perceived. Tyson & al., claimants, vs. Prior, 1 Gallison's R. 133. See, also, The Sybil, 5 Wh. Rep. 98.

"As the allowance of salvage necessarily rests very much in the discretion of the court, it is hardly possible in many cases, that different courts, exercising independent judgment, should arrive at precisely the same conclusion. * * * * * * * * * * Each may exercise the most enlightened discretion, and yet from the necessary differences of the human mind, they may differently adjust the salvage to the circumstances. On this account it has always been the disposition of the appellate courts of the United States, in salvage cases, to discourage appeals as mischievous and expensive to all parties. And, therefore, they generally adhere to the rate of salvage allowed in the court from which the appeal is taken, unless the evidence clearly calls for a different proportion. 1 Sum. 214, The Emulous, The Delphos, 1 Newb. 412.

Is there error apparent in the record?

Does the evidence call for a different proportion?

Respectfully submitted.

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for Appellees.

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